

On the Use of Condoms to Prevent Acquired Immune Deficiency Syndrome

Rev. Benedict Guevin, O.S.B., and
Rev. Martin Rhonheimer

Argument of Benedict Guevin

In an article entitled “The Truth about Condoms,”¹ Martin Rhonheimer, a priest of Opus Dei and a professor of Ethics and Political Philosophy at the Pontifical University of the Holy Cross in Rome, challenges Church leaders who have caused a furor by suggesting that even the HIV (human immunodeficiency virus)-infected should avoid the use of condoms. Rhonheimer argues that this is not, in fact, Church teaching. When confronted with AIDS-infected promiscuous people or homosexuals who are using condoms, Rhonheimer counsels them to live upright and well-ordered sexual lives. He does not tell them to use condoms. But he assumes that if they choose to have sex they will at least exhibit some sense of responsibility and use them. He believes that his position does not constitute a challenge to the Church’s teaching on contraception, a teaching that he fully respects and upholds. Moreover, he believes that campaigns to promote abstinence and fidelity are certainly and ultimately the only effective long-term remedy to combat the AIDS epidemic. He agrees with the Church’s position that campaigns to promote condom use are not helpful for the future of human society. But he concludes that the Church cannot possibly teach that people engaged in immoral lifestyles should not use condoms.

¹Martin Rhonheimer, “The Truth About Condoms,” *The Tablet* (July 10, 2004): 10–11.

I fully concur with Rhonheimer's position and have adopted a similar stance with people who are unwilling to entertain the idea of abstinence or fidelity.

What is more surprising, however, is Rhonheimer's position 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. There may be other reasons to warn against the use of a condom in such a case, or to advise total continence, but these will not be because of the Church's teaching on contraception but for pastoral or simply prudential reasons—the risk, for example, of the condom not working.²

It is this position that I wish to examine in more detail by examining the structure of the moral act as Rhonheimer sees it. For Rhonheimer, "a contraceptive choice is the choice of an act that prevents freely consented performances of sexual intercourse, which are foreseen to have procreative consequences, from having those consequences, and which is a choice made just for this reason."³ In other words, a contraceptive choice is made with the express purpose of preventing the procreative consequences of the marital act. In the case of the HIV-infected husband, he argues, no such contraceptive choice is made. Rather, the choice of the HIV-infected man is to prevent the infection of his wife. If there is a contraceptive consequence to the act of protecting his wife, it is unintentional (*praeter intentionem*) and, as such, does not shape the moral meaning of the act as a contraceptive one. Rhonheimer believes that his position is consonant with *Humanae vitae* and with the *Catechism of the Catholic Church*, which define the intrinsically evil choice of a contraceptive act as an "action which, whether in anticipation of the conjugal act, or in its accomplishment, or in the development of its natural consequences, proposes, whether as an end or as a means, to render procreation impossible."⁴ No one who has read Rhonheimer on the issue of contraception can call in to question his support for the Church's teaching. But, in this instance, is his moral analysis correct?

Some argue that his analysis is indeed correct. Those who do so cite the example of a wife who must take an anovulant for therapeutic purposes. Her choice is not a contraceptive one, but rather a legitimate medical one in order to treat a menstrual pathology. That the anovulant renders her sterile is clearly unintentional and, therefore, does not shape the moral meaning of the act as a contraceptive one because, in the case of the therapeutic use of the pill, a present pathology is being treated concurrently with her engaging in sexual intercourse. In the case of the HIV-infected husband, such a parallel is often made, just as Rhonheimer has done. But is this a

²Ibid., 11.

³Martin Rhonheimer, "Contraception, Sexual Behavior, and Natural Law: Philosophical Foundation of the Norm of 'Humanae vitae,'" *Linacre Quarterly* 56.2 (May 1989): 30.

⁴Paul VI, *Humanae vitae* (July 25, 1968), n. 14; *Catechism of the Catholic Church*, 2nd ed., trans. United States Conference of Catholic Bishops (Vatican City: Libreria Editrice Vaticana, 1997), n. 2370.

legitimate parallel? Is the choice to use an anovulant for therapeutic purposes morally equivalent to the choice of using a condom to prevent the HIV-infection of one's spouse? Some would argue that they are not parallel. Why is this?⁵

It is argued that in the case of the HIV-infected husband wishing to prevent infecting his wife, the use of a condom is what renders the act sterile. This sterility is inextricably bound up with the act of sexual intercourse. The sexual act is not sterile because of some condition independent of the act of intercourse, as in the case of the use of an anovulant for therapeutic purposes. Rather, the condom is used precisely in order to engage in sexual intercourse. While it is true that the subjective intention of the couple may not be contraceptive, the objective intention of the couple is, because they are choosing to alter the finality of the sexual act. In this instance, and in spite of the subjective intention of the couple, the objective intention is the misdirection of the inherent ordering of sexual intercourse between the spouses. As such, this objective intention runs counter to the teachings of *Humanae vitae* according to which "it is necessary that each conjugal act remain ordained in itself to the procreating of human life."⁶ So, while the desire to prevent the transmission of HIV might be right (as well as the particular circumstance of HIV-free sex), the object of the act, as disordered sexual intercourse, is wrong. The only means by which the couple can engage in HIV-free sexual intercourse is to sever the unitive meaning of their act from its procreative meaning.

In my estimation, the fundamental difference between Rhonheimer's position and the other position (against an HIV-infected husband using condoms during intercourse with his wife) lies in the moral significance of the means used. Rhonheimer bases his determination on the choice of the will of the couple not to engage in contraceptive sexual intercourse. Their choice not to contracept but to protect from infection allows Rhonheimer to conclude that their act is non-contraceptive and, therefore, morally licit. The other position, while recognizing the choice of the will of the couple not to engage in contraceptive sexual intercourse, also takes into consideration the means used to bring about the end of protecting against infection. For the latter position, the choice of the means used, namely, a condom, does indeed violate the norms of *Humanae vitae* in a way that differs significantly from the use of the pill for therapeutic purposes. And this choice is intrinsically evil.

While I am sympathetic to the plight of those couples who find themselves in this situation, I am reluctant to accept Rhonheimer's analysis. The liceity of a moral choice depends not only on the subjective intention of the agent, but on his or her objective intention as well, and this includes the means used. While a means is not in and of itself evil (i.e., a condom, in this case, is not evil), the choice to use this particular means (i.e., a condom) is. The choice of the means used enters into the moral meaning of the act that the agent chooses to perform.

⁵For the following analysis, I am indebted to Dr. Peter Cataldo, in a private communication.

⁶Paul VI, *Humanae vitae*, n. 11.

Argument of Martin Rhonheimer

First of all I would like to express my gratitude and joy about Father Guevin's perfect understanding of the intention and meaning of my article in *The Tablet*.¹ As he clearly says, with this article I wanted to support both the Church's teaching on contraception and its opposition to condom campaigns for stopping the AIDS epidemic. The article was written in reaction to a BBC program broadcast last June, which strongly attacked, if not ridiculed, the Church's position on these issues, and to a subsequent article which I found confusing in *The Tablet* commenting on this program.²

My incidental remark in this article, about an HIV (human immunodeficiency)-infected spouse using a condom to prevent his wife from being infected, touches a rather complex and difficult question, which—as far as I am informed—from a doctrinal point of view is not yet clearly settled by the magisterium of the Church. Notice that in my article I did not assert, as Fr. Guevin seems to suggest, that the use of condoms in the mentioned case is a good thing. On the contrary, I mentioned prudential reasons against it, because condoms are not safe. In addition, and rather generally, I also spoke of “pastoral reasons” for which a priest would have to tell people not to use a condom in the case of a married couple. One of these reasons is that fertile couples, living their parenthood responsibly in the case where one of the spouses is HIV-infected, will have to abstain from intercourse in order to avoid the conception of a HIV-infected baby; to prevent such a conception by using a condom would be a contraceptive act, and thus illicit.

Abstracting from this, I wrote that a possible contraceptive effect of the use of condoms for health reasons would be an—unintentional—side-effect. This is evident in the case of a sterile couple: the point of their using a condom is not an act of contraception, as described in *Humanae vitae*, n. 14; this shows that a condom is not *necessarily* a contraceptive means; it is so only if it is used for contraception. Of course, we normally think of condoms as being used for contraceptive purposes (which is one of the reasons they are produced), but this does not necessarily imply, as the case of a sterile couple clearly shows, that using a condom makes sense only as a means of contraception.

The meaning of my incidental remark in the *Tablet* article, then, was simply to underline that *if* using condoms for preventing infection is wrong, this will be for reasons different from those for which *contraception* is wrong—and also that the Church's teaching about contraception as an intrinsic evil is independent of the question of whether using condoms for preventing infection of a spouse is morally admissible. Having mentioned “prudential” and “pastoral” reasons which advise

I am indebted to Dr. William F. Murphy, Jr. for helpful comments and a stylistic revision of the text.

¹Martin Rhonheimer, “The Truth About Condoms,” *The Tablet* (July 10, 2004): 10–11.

²BBC, “Can Condoms Kill?” <http://news.bbc.co.uk/1/hi/programmes/panorama/3844945.stm>, from *Panorama*, June 27, 2004; Austen Ivereigh, “A Matter of Life and Death,” *The Tablet* (July 3, 2004): 8–9.

total abstinence also in the latter case, I did not want to exclude that these reasons are also *moral* reasons.

Yet, Fr. Guevin has made some important and useful points, to which I want briefly to reply, without trying, however, to settle the question exhaustively. As I have said, I consider the question to be a difficult one. I do not exclude the possibility that further discussions will make me change my mind. If a magisterial teaching develops on this issue, I will have no difficulty adhering to it.

First of all, it is not my view, as Fr. Guevin is suggesting, that using a condom for preventing infection is an *instance* of what *Humanae vitae*, n. 15 calls “therapeutic means.” I do not think there is a parallelism between the therapeutic use of anovulants and the use of condoms for preventing infection. Rather, I would say that there is an *analogy* between these cases. “Analogy” precisely means that there is something similar and something different (while parallel “instances” are concrete cases of a kind, cases which fully comply with what the kind is). Fr. Guevin has explained very well the differences between the two cases, but he has failed to mention what they share in common. They are alike in that neither intends to bring about the contraceptive (or sterilizing) effect.

Take another case of therapeutic sterilization. When a married woman has a cancerous ovary extracted, she knows that she will continue to engage in sexual intercourse with her spouse in the future, and knows that all of these acts will be sterile because of the operation. She has willingly undergone this operation to save her life. She does not choose an act of “sterilization” (“permanent contraception,” as it were) in the sense in which it is prohibited by *Humanae vitae*. This is so *only because she does not intend this*. Even though she does something which prevents her sexual acts from being fertile, she does not do what she does *proposing* to prevent these foreseen acts from being fertile. The reason, *and the only reason*, why therapeutic sterilization is not illicit sterilization, is that the contraceptive effect is intended neither as an end nor as a means; that is, it is what the tradition has called *praeter intentionem*, “beside the intention” (or “outside,” “beyond” the intention). This is why I have included the intention of preventing conception in the definition of the object of the contraceptive choice. I think this is also why the norm of *Humanae vitae*, quoted in the *Catechism of the Catholic Church*, does not speak only of physically preventing conception, but also includes the proposal or intention to prevent conception—using the word *intendere*.³

Thus, I do not subsume the case of using condoms for prevention of infection under “therapeutic means” (because there is no “therapy”). Rather, I consider it, in a moral sense, as non-contraceptive for the same reason that therapeutic means are, morally speaking, non-contraceptive: the contraceptive effect is beside the intention. For the same reason I do *not* consider this use of condoms as a case of the application of the principle of double effect. Notice that not all cases in which some-

³Paul VI, *Humanae vitae* (July 25, 1968), n. 14; *Catechism of the Catholic Church*, 2nd ed., trans. United States Conference of Catholic Bishops (Vatican City: Libreria Editrice Vaticana, 1997), n. 2370.

thing is done *praeter intentionem* are cases in which the principle of double effect applies. What, however, does apply to all cases of causing something *praeter intentionem* is one essential feature contained also in cases of double effect: that something is knowingly caused which, however, remains without any influence on the moral quality of the corresponding action.

Although preventing infection by using a condom is different from taking anovulants for therapeutic reasons as far as the *behavioral* structure of the action is concerned, there is no relevant difference in the *intentional* structure. Neither case includes the choice of a contraceptive outcome. These cases have precisely this in common, and that is why there is an analogy between them. The fact that using condoms for preventing infection means to use them, as Fr. Guevin correctly says, “precisely in order to engage in sexual intercourse,” and not simply to prevent infection (which without intercourse obviously could not occur), does not seem to me decisive in the present context. It would be relevant only if my argument was meant to be based on the principle of double effect, which, however, it is not. This principle, to be correctly applied, presupposes that one already knows the nature of the object; that is, whether the very action that causes the evil effect is itself good or at least indifferent. Yet, the question we are dealing with here is precisely about the object and my argument is an argument about the *object* of using a condom; so the principle of double effect is not pertinent here. 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). Granted, the condom is used only because one wants to engage in intercourse, which one could not otherwise do without risking the infection of the other spouse. However, the questions here concern 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.

My further argument, so it seems to me, consists in nothing else than in applying the following general principle classically, but incidentally, formulated by St. Thomas Aquinas when talking about self-defense:

Nothing hinders one act from having two effects, only one of which is intended, while the other is beside the intention. Now moral acts take their species according to what is intended, and not according to what is beside the intention, since this is accidental.⁴

Notice that Aquinas here tries to determine the moral object of the physical act of “killing a man” in self-defense. He says that this may be licit, if one does not intend the aggressor’s death, but only to defend oneself by stopping the aggression. Depending on the intention, there will be two different acts by their *object*: “murder” (committed for the *further* end of saving one’s life) or “self-defense.” Of course, the general principle as expressed above can be applied also to actions

⁴Thomas Aquinas, *Summa theologiae*, II–II, Q. 64.7. In this article, the translations are from Aquinas, *Summa Theologica*, trans. Fathers of the English Dominican Province (Westminster, MD: Christian Classics, 1981).

which are already morally specified by their object (this, then, is the classical case of “double effect”). Yet, Aquinas did not “know” this principle of “double effect”; it was elaborated much later in the history of moral theology. Here, he simply makes a general point about the moral species of an act and intention: what is beside the intention does not form part of the moral species of an act; this means that what is *praeter intentionem* does not enter into its object. Or, expressed positively, an act physically considered—in its “natural species”—is shaped in its “moral species” by what is basically intended in it but not by what is *praeter intentionem*. Similarly, without this “basic intention” it could not even be conceived as a “human act” which springs from a deliberate will. Consider Aquinas’ following statement:

It is possible ... that an act which is one in respect of its natural species (*species naturae*), be ordained to several ends of the will: thus this act *to kill a man*, which is but one act in respect of its natural species, can be ordained, as to an end, to the safeguarding of justice, and to the satisfying of anger: the result being that there would be several acts in different species of morality (*species moris*): since in one way there will be an act of virtue, in another, an act of vice. For a movement does not receive its species from that which is its terminus accidentally, but only from that which is its *per se* terminus. Now moral ends are accidental to a natural thing, and conversely the relation to a natural end is accidental to morality. Consequently there is no reason why acts which are the same considered in their natural species, should not be diverse, considered in their moral species, and conversely.⁵

The point is that “to kill a man” cannot yet be morally qualified, because it is not yet described as a human act, but only as a natural event (just as using a condom as preventing conception is described only as a natural event, and not as human act able to be morally specified as “good” or “evil”). By saying that “the relation to a natural end is accidental to morality,” Aquinas makes the same point as before: what is “beside the intention” is, morally speaking, “accidental” and thus does not shape the moral species (or the moral object) of the action. This is why Aquinas teaches that, in legitimate self-defense, the important thing is *not* that one physically kills the aggressor in a very direct manner (for example, by shooting him in the head), but that one does it not with the intent to kill him, but to stop his aggression. For this reason it is most significant that Aquinas adds “it is not lawful for a man to intend killing a man in self-defense.”⁶

Now, “having sexual intercourse by using a condom” is the description of an act in its natural species (we have to refrain from intuitively including up front that this is done in order to prevent conception). 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

⁵Ibid., I-II, Q.1.3, reply 3.

⁶Ibid., II-II, Q.64.7.

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 (as is presupposed in the present case).

Referring to “intentions” and “ends” in order to understand the moral species to which a type of act belongs does not imply 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.⁷ Not any intention can *reasonably* inform any act or behavior: one cannot swallow stones with the intention of nourishing oneself, nor are genital acts between persons of the same sex apt to be an expression of friendship and love. But I think one can reasonably express marital love in sexual intercourse while using a condom to reduce the danger of infection (though, given the limited safety of condoms, it is more reasonable to abstain completely). But a marital act thus performed—and without opposing one’s will to the good of offspring within that act—has still a point as a marital act of loving union.

There are some moral theologians, it is true, mainly in the Anglo-Saxon world, who deny that such an act, in which insemination is impeded and which, as they say, is therefore not of a generative kind, may any longer be called a marital act.⁸ If this argument is sound, it would in fact be a powerful objection to my position; but I think it is unsound. This argument, it seems to me, is a relic of an older view, focused on seeing the evil of contraception in the frustration of natural patterns, of its destroying the physical aptitude of sexual intercourse to be generative. This argument puts condomistic sex of any kind in a certain analogy—though not similarity—with sexual acts “against nature,” like sodomy and masturbation, even in the present case where the condom is used only for preventing infection, and in the case of sterile couples. I think this is incorrect; at a minimum, it is counter-intuitive. 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. The same cannot be said of condomistic sex: 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. 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.

Referring to “ends” and corresponding intentions in this context is not to disregard the “object” in favor of the (subjective) intention, as Fr. Guevin reproaches me.

⁷See Martin Rhonheimer, “The Moral Significance of Pre-Rational Nature in Aquinas: A Reply to Jean Porter (and Stanley Hauerwas),” *American Journal of Jurisprudence* 48 (2003): 253–280.

⁸See William E. May, “Using Condoms to Prevent HIV,” in *The National Catholic Bioethics Quarterly* 4.4 (Winter 2004): 667–668; Germain Grisez, *The Way of the Lord Jesus—vol. II: Living a Christian Life* (Quincy, IL: Franciscan Press, 1993): 636; 640, note 175.

Rather, it is to acknowledge that we cannot define the moral object of an act without including in its definition (or description) a basic intentionality, given that nothing can be done – in the sense of a human act – without intending *something* in what one is doing. Of course, this basic intentionality is to be distinguished from the “*ulterior intentions*” mentioned in the encyclical *Veritatis splendor*, n. 80, and called in the *Catechism of the Catholic Church*, n. 1753, *intentio superaddita* (“added intention”). Such ulterior intentions—commonly called “the intention” for which something is done—refer to higher-ordered ends, with which one does what one intentionally does. Because I have written extensively about this elsewhere, I will not go further into detail here.⁹ But let us consider again the example of “killing”: one is not a murderer and one has not committed a homicide simply by causing the death of a human person. For the act to be “murder” or “homicide,” it must have been performed *intending* to kill the person (as a means of something else or as the goal of the action). Morally speaking, “direct killing” is always “intentional killing,” which means to *choose* and therefore to *want* the death of a person (be it as a means or as the final goal).¹⁰

Thus I do not say, as Fr. Guevin objects, that only the intention counts, and not the means chosen for achieving a goal. What I am talking about when I talk about the basic intentionality of a human act is precisely what constitutes a human action as a means (to a further end). Notice that when we are talking in moral philosophy and theology—that is, considering things from a moral point of view—about “means,” we do not refer to “things” used in actions, or instruments of any kind (knives, scissors, pills, etc.), but to actions chosen for a further end. A “condom,” considered as a “thing” or a “device,” is not a “means” in the *moral* sense. Morally speaking, a “means” is an *action chosen to achieve a further goal*. (Aquinas, following Aristotle, talks of means as “*ea quae sunt ad finem*”; he does not know and never uses another term for “means.”) So the “means” is not the condom as such, but a determinate *act of using it*. And only this *act of using it* can be qualified as morally good or evil.

⁹Most recently in my paper “The Perspective of the Acting Person and the Nature of Practical Reason: The ‘Object of the Human Act’ in Thomistic Anthropology of Action,” *Nova et Vetera* (English Edition), 2.2 (2004): 461–516. See also my earlier article “Intentional Actions and the Meaning of Object: A Reply to Richard McCormick,” *The Thomist* 59.2 (April 1995): 279–311; reprinted in *Veritatis Splendor and the Renewal of Moral Theology*, eds. by J. A. DiNoia and Romanus Cessario (Huntington, IN: Our Sunday Visitor, 1999), 241–268. It is more extensively and systematically explored in my book (also available in Italian and Spanish) *Die Perspektive der Moral. Philosophische Grundlagen der Tugendethik* (Berlin: Akademie Verlag, 2001).

¹⁰Regarding this, see my “Sins Against Justice (IIa IIae, qq. 59–78),” in *The Ethics of Aquinas*, edited by Stephen J. Pope (Washington D. C.: Georgetown University Press, 2002), 287–303; and my extensive treatise, published in agreement with the Congregation for the Doctrine of Faith to promote discussions on the subject: “Güterabwägung, Tötungsverbot und Abtreibung in vitalen Konfliktfällen,” in M. Rhonheimer, *Abtreibung und Lebensschutz. Tötungsverbot und Recht auf Leben in der politischen und medizinischen Ethik* (Paderborn: Ferdinand Schöningh, 2003), 131–236.

Finally, Fr. Guevin writes that by using a condom to prevent infection, spouses “are choosing to alter the finality of the sexual act.” He believes that, because of a severance of the unitive from the procreative meaning of the sexual act, this act is not, as *Humanae vitae* teaches it must be, “ordained in itself to the procreating of human life.”¹¹ I respond that this being “in itself ordained to the transmission of human life” (*ad vitam procreandam per se destinatus*), which is most commonly referred to as the “openness” of each marital act to the procreation of new life, cannot reasonably be understood as *physical* openness to the possibility of procreation. This is obvious because otherwise sexual intercourse in knowingly infertile times—and most natural family planning—or that engaged in by entirely sterile couples (because of age or disease) would be morally illicit. Admittedly, in the case of using condoms to prevent infection we are confronted with the difficulty that—in most cases—the carrier of fecundation, the semen, is materially identical with the carrier of infection (though the condom is not used to impede the male sperm to enter into the women’s womb, but rather the HIV virus). This identity makes it, at first sight, intuitively more difficult to understand why those who intentionally impede insemination (to prevent infection) do not also intentionally prevent fecundation, because they knowingly render (provided they are not infertile anyway) a possibly fertile sexual act infertile. But here we return to what was already said: what is physically caused is not necessarily caused in a morally relevant sense. Again, what *Humanae vitae* says in n. 11 also applies to the present case, and analogously to natural sterility and therapeutic sterilization: the marital act “does not ... cease to be legitimate even when, for reasons independent of their [the spouses’] will, it is foreseen to be infertile.”

Therefore, the required “openness” of the marital act to the transmission of life must be of an intentional kind: nothing must be done to use the gift of sexuality in a way incompatible with a will to serve the transmission of human life. Such an incompatibility exists when, as *Humanae vitae* asserts in note 14, something is done “which either before, at the moment of, or after sexual intercourse, is specifically intended to prevent procreation—whether as an end or as a means.”¹² By teaching that the doctrine of the required openness of sexual acts to the transmission of life is founded on the inseparable unity of the procreative and the unitive meaning of the marital act, *Humanae vitae* affirms that to be an act of true marital love, the sexual union between the spouses must include both their mutual self-giving and their openness to serve by their love the task of transmitting human life. This is why “intention” seems to me to be so important to define the very contraceptive act: the openness of the spouses, and therefore the openness of their sexual acts—as hu-

¹¹Paul VI, *Humanae vitae*, n. 11.

¹²This time I have used the translation of the 1970 revised edition of the Catholic Truth Society. Fr. Guevin has quoted the—equivalent—translation used in the *Catechism* and in my article in *The Tablet*. Both are faithful to the Latin original: “*Item quivis respuendus est actus, qui, cum coniugale commercium vel praevidetur vel efficitur vel ad suos naturales exitus ducit, id tamquam finem obtinendum aut viam adhibendam intendat, ut procreatio impediatur.*”

man acts—to the task of transmitting human life, depends on their *willingness* to responsibly serve this task when engaging in sexual intercourse. This is why *Humanae vitae* stresses that natural infertility, which is outside the intention, does not impede such naturally infertile acts from being truly “open”—not in a biological, but in an intentional sense—to the task of transmitting human life. Only by acting willingly, that is, intentionally, against the procreative meaning of marital intercourse, does one destroy the essential bond by which the two meanings are united.

In my view, this also applies to other cases in which nothing is intentionally done to prevent sexual acts from being procreative, that is, in which nothing is done *intending* that procreation be impeded. This—as I have argued in my 1989 article in the *Linacre Quarterly* to which Fr. Guevin refers in note three¹³—specifies the real evil of contraception: to want to have sex and at the same time to prevent its procreative consequences; to avoid, therefore, modifying one’s bodily, sexual behavior in a chaste way for reasons of procreative responsibility, thus depriving sexual acts of their full marital meaning which includes both the unitive and the procreative dimension. Nothing of this follows from using a condom only to prevent infection, because nothing is done with the intention of depriving sexual acts of their possible fertility. However, what is intentionally being done in fact does, if the spouses are not infertile, deprive the act of fertility; this, however, is not intended, whether as a means or as an end (precisely in *this* aspect lies the analogy—not the parallelism—to therapeutic treatments with sterilizing or contraceptive side-effects).

Therefore, Fr. Guevin’s claim that the use of a condom in this case separates the two meanings cannot serve as an argument for showing that the marital acts in question are not open to procreation in the sense required by *Humanae vitae*. One has rather to show, inversely, that an act is not open, in an intentional and thus morally relevant way, to the task of transmitting human life. Only in such intentional and moral senses can one *conclude* that the two meanings of the marital act have in fact been severed. This is why I think Fr. Guevin has begged the question, because he argued in the first (physical) instead of in the second (intentional and moral) way. My argument, however, runs in the second way; that is, it says that the act of using a condom to prevent infection is not intentionally closing it to the task of transmitting human life—the contraceptive effect is outside the intention—and that *therefore* the two meanings of the marital act are not separated.

All these are arguments exclusively meant to show that the use of condoms for preventing infection *is not a case of contraception* and therefore does not fall under the norm formulated in *Humanae vitae*, n. 14, and repeated in the *Catechism*, n. 2370. But what I have said is not an argument which shows that the use of condoms in such cases is good, licit, or even advisable. As a priest, I would try to help a couple in this situation to live in complete sexual abstinence, but 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” in the way that contraception is. This is because these spouses do not oppose their

¹³Martin Rhonheimer, “Contraception, Sexual Behavior, and Natural Law: Philosophical Foundation of the Norm of ‘*Humanae vitae*,’” *Linacre Quarterly* 56.2 (May 1989): 30.

hearts to the nature of sexuality as being essentially and by nature open to the transmission of life. Basically, their situation is truly tragic. Let us consider the obvious moral question of how accepting the risk of transmitting HIV infection could be compatible with marital love: generally speaking, of course, it is not, but we have to bear in mind that there are extremely difficult situations in which it might be morally acceptable to freely expose oneself to such a risk.

I have in mind cases in which, for example, a woman freely—and I would add, with heroic charity—chooses to demand having intercourse with her HIV-infected husband, who is unable to live in complete abstinence, in order to prevent him from masturbating or being unfaithful, though knowing that she exposes herself to the risk of being infected. That such a husband's love for his wife is not exemplary is obvious, though precisely his spouse's choice will perhaps increase and mature it.¹⁴ But this is not the question here. The point is that what such spouses are doing—mainly if they are elderly and/or sterile—has nothing morally in common with what we call “contraception.” It does not involve the intentional prevention of conception because one wants to have “sex without children,” thereby altering the very meaning of marital love as it is expressed in the marital act of sexual intercourse. In my view, it is important to consider that the evil is *this*, and not “condoms” as such or the impeding of a conception *as such*, that is, without it being intended. We should be careful not to fall into legalism or biologism in assessing such cases. The problem of contraception is, in reality, a matter of moral virtue. To want to have “sex without children” is something very different from the case we are discussing here. But even if something may be morally admissible in certain circumstances, this does not mean that it is what moral perfection and Christian holiness require. But that is another question.

¹⁴In this example, it is implied that they have jointly agreed, at the wife's initiative, to employ the condom in intercourse to prevent the transmission of HIV. The husband's act is morally defective (in most, but perhaps not all cases) because of the risk to the wife. But it might also be the case that, due to a depression the husband suffers in consequence of his being (perhaps inculpably) infected, he is not able to do better. Her (heroic) act of initiating and carrying out intercourse with a condom is formally and materially the conjugal act, although in a modified form to avoid HIV, with the further intention of helping her husband to avoid sin.