

Married Couples,  
AIDS,  
and the Use of Condoms:  
Moral Implications.

On the Occasion of the Fortieth Anniversary  
of the Encyclical Letter *Humanae Vitae*

Rev. Fr. Juan Esposito, JD., MDiv., MA.

## Introduction

Forty years ago, referring to ‘*conjugal acts that are rendered intentionally infecund,*’ and, therefore, are ‘*intrinsically dishonest,*’ His Holiness Pope Paul VI in his Encyclical Letter *Humanae Vitae*, taught:

*“It is never lawful, even for the gravest reasons, to do evil that good may come of it – in other words, to intend directly something which of its very nature contradicts the moral order, and which must therefore be judged unworthy of man, even though the intention is to protect or promote the welfare of an individual, of a family or of society in general. Consequently, it is a serious error to think that a whole married life of otherwise normal relations can justify sexual intercourse which is deliberately contraceptive and so intrinsically wrong.”*<sup>1</sup>

Forty years after the publication of *Humanae Vitae*, the document and the moral principles it clearly enunciates *remain valid retaining all its normative force*. It is therefore necessary to return to those principles, over and over again, if one is to succeed in the accurate moral analysis of new cases that may arise.

In the last few years there has been much debate concerning the moral implications of the following question: *Is it morally permissible for a fertile heterosexual married couple to use a condom with the intention of preventing transmission of the HIV to the non-infected spouse?* The answer to this question largely depends on another one: *whether or not the act of using a condom in this particular case is a contraceptive act as defined in Humane Vitae.*<sup>2</sup> In turn, the question concerning contraception can only be answered through an accurate *description of the object of this act*.

---

<sup>1</sup> Pope Paul, VI, Encyclical Letter *Humanae Vitae*, n.14

<sup>2</sup> A contraceptive act is 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.” Paul VI, *Humanae vitae* (July 25, 1968), n. 14

The aim of this paper is to identify some of the moral implications surrounding this case by introducing the arguments of professor Martin Rhonheimer and his understanding of the case, presenting an analysis of the moral object by professor Janet Smith, and finally, by offering professor Steven Long's insights regarding the principle of double effect in relation to this particular case.

Therefore, in the three sections that follow I will substantially reproduce the authors' relevant arguments in favor or against the moral permissibility of the use of condoms in this case.<sup>3</sup> I will conclude with a brief summary of these arguments, the answer to the questions posed above, and a brief final reflection.

## 1- The Case. Martin Rhonheimer.

The debate concerning the moral permissibility of using condoms by a fertile heterosexual married couple has been reignited by Martin Rhonheimer who in 2004 wrote in *The Tablet*:

*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.*<sup>4</sup>

---

<sup>3</sup> All underlined italic is mine and is meant to emphasize and make it easier to follow the argumentation of the case.

<sup>4</sup> Martin Rhonheimer, "The Truth about Condoms," *The Tablet* 258.8545 (July 10, 2004): 11.

Janet Smith, who disagrees with Rhonheimer, summarizes his view. Rhonheimer “does not think that condom use by HIV-infected spouses necessarily entails a contraceptive intent; he claims that their intent is to reduce the risk of transmitting the HIV and that the contraceptive effect of the condom is a side effect...the spouses are not choosing to contracept: they are choosing to reduce the risk of transmitting the HIV.”<sup>5</sup> Thus, Smith infers that Rhonheimer, “understands the resultant infertility to be an evil, a physical evil, but not a moral evil...they do not choose infertility; they tolerate it as a side effect and a proportionate evil to be tolerated in pursuit of other goods.”<sup>6</sup>

The reasoning that allows Rhonheimer to conclude that this is not an instance of a contraceptive act is closely related to his own understanding and description of the object of the moral act in general which he applies here to the analysis of the object of this particular moral act. Rhonheimer argues that,

‘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.<sup>7</sup> [Therefore], the physical preventing of conception [in this case] is not a moral problem as long as this is not precisely

---

<sup>5</sup> Janet Smith, “The Morality of Condom use by HIV-Infected Spouses,” *The Thomist* 70 (2006): 53.

<sup>6</sup> *Ibid.*, 53.

<sup>7</sup> Benedict Guevin, O.S.B., and Martin Rhonheimer, “On the Use of Condoms to Prevent Acquired Immune Deficiency Syndrome,” *The National Catholic Bioethics Quarterly* 5 (2005): 43.

done with contraceptive intent, and as long as there is another good reason to have sexual intercourse.<sup>8</sup>

In other words, Rhonheimer maintains that the act described is not a contraceptive act *simply because the spouses do not have a contraceptive intention*. We can, however, ask ourselves if this is a morally accurate understanding and description of the object of the act of condomnized sexual intercourse by fertile heterosexual HIV-infected spouses.<sup>9</sup>

In the paragraphs that follow, I will offer professor Janet Smith's arguments of what I find to be an accurate explanation of the object of the moral act and the application of her arguments to the case in question.

## 2- The Object of the Moral Act. Janet Smith.

Every moral act includes both a *finis operantis* or *finis agentis*, the end of the agent; and a *finis operis* or *finis actus*, the end of the act itself, the object of the moral act. On the relation between these two elements of the moral act Janet Smith observes that:

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

---

<sup>8</sup> *Ibid.*, 44. Steven Long argues that "the object of the moral act...always materially includes *the act itself and the integral nature of the act*, which accordingly constitutes one...cause of the moral species of the act. To refuse to acknowledge that the physical structure of the act materially enters into the moral object of an act is pure *angelism*, a residue of Cartesian error. It is cognate with logicism in treating that which is natural as reducible to a cognitive entity." Steven Long "The Teleological Grammar of the Moral Act" (Naples, FL: Sapientia Press, 2007), 108. Elsewhere he explains that "according to some it is only the agent's intelligible proposal, and in no way his action or its integral nature, which enters into the moral object...It is a failure to consider the actual nature of the act deliberately chosen and preformed on the supposition that the delineation of one's purely intelligible proposal is sufficient to constitute the object of the moral act." *Ibid.*, 114.

<sup>9</sup> Christopher Oleson believes that Rhonheimer falls into 'physicalism' or 'naturalism' in the analysis of the moral object of the act of contraception. For his complete argument and Rhonheimer's response see respectively: Christopher Oleson, "Nature, "Naturalism," and the Immorality of Contraception. A Critique of Fr. Rhonheimer on Condom Use and Contraceptive Intent," *The National Catholic Bioethics Quarterly* 5 (2006): 719-730. And Martin Rhonheimer, "The Contraceptive Choice, Condom Use, and a Moral Argument Based on Nature: A Reply to Christopher Oleson," *The National Catholic Bioethics Quarterly* 7(2007): 273-292.

choose that action without also choosing that end along with any other further ends the agent might have.”<sup>10</sup> Therefore “the finis operis/actus cannot not be part of what is chosen by the agent; it is always a part of the means chosen to effect the intended end. What is key is that the agent, in spite of not desiring the finis operis/actus or the end of the object of the act, still chooses it; the bad effect is not simply a tolerated side effect but an intrinsic part of the object or means.”<sup>11</sup>

Some crucial points need to be highlighted from this way of understanding the object of a moral act. First is that the object (or *finis operis*) and the intention (or *finis operantis*) of the moral act are not the same. Furthermore, the rationally chosen object has or possesses an intrinsic teleology independently of the intention of the agent. It is not the intention of the moral agent the one which determines the moral quality of the object; it is therefore wrong to think of the chosen object as a sort of morally indeterminate category that only becomes morally good or bad when informed by the good or bad intention of the agent. Applying these principles to the case of our study Janet Smith concludes:

the use of condom by those seeking to reduce the transmission of the HIV is the object and means of the action and as object has its own end (the finis operis) – namely, the prevention of procreation<sup>12</sup> – and the intention to reduce the transmission of the HIV is the end (the *finis operantis*) of the action, that is, it is the intention of the agent<sup>13</sup>

---

<sup>10</sup> Smith, 55.

<sup>11</sup> *Ibid.*, 58.

<sup>12</sup> “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.” *Ibid.*, 57

<sup>13</sup> *Ibid.*, 56. Elsewhere Janet Smith states that “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 heterosexual sexual intercourse” *Ibid.*, 57

Rhonheimer, according to Smith's view, by speaking "of the act of those using a condom to reduce the risk of the transmission of HIV as the '*intent*' to reduce the risk of transmission of HIV...folds the intention, or the end of an action, into the object of the action."<sup>14</sup>

### 3- The Principle of Double Effect. Steven Long.

Rhonheimer himself does not think that the case of our analysis is one in which the principle of double effect (PDE hereafter) would apply. He says: "*I do not consider this use of condoms as a case of the application of the principle of double effect.*"<sup>15</sup>

Although Rhonheimer dismisses the possibility of applying the PDE to this case, his reasoning and the language he uses in his analysis is often very similar to that of the PDE. Thus, he states in his article in *The Tablet* already quoted, that in this case if "conception is prevented, this will be an—unintentional—side effect."<sup>16</sup> Janet Smith, for example, argues that in fact "Rhonheimer in the final analysis is employing the PDE."<sup>17</sup>

Steven Long does not think that this case could be justified by appealing to the PDE<sup>18</sup> either. However, for the sake of argumentation he entertains that possibility and I find his

---

<sup>14</sup> *Ibid.*, 56.

<sup>15</sup> Benedict Guevin, O.S.B., and Martin Rhonheimer, "On the Use of Condoms to Prevent Acquired Immune Deficiency Syndrome," 41. He also explains: "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.*" *Ibid.*, 42.

<sup>16</sup> Rhonheimer, "The Truth About Condoms," 11.

<sup>17</sup> Smith, 54.

<sup>18</sup> For a case to fall under the provisions of the PDE, all the following conditions are required: "1. The directly intended object of the act must not be intrinsically contradictory to the true ultimate goal of human life. 2. The intention of the agent must be to achieve the beneficial effects and as far as possible to avoid the harmful effects (the agent must only indirectly intend the harm). 3. The foreseen beneficial effects must be at least equal to the foreseen

analysis of the case and interaction with the PDE to be very insightful. Therefore, I will reproduce parts of his argument in the paragraphs that follow. Long observes that:

In particular reference to a specific conjugal act, the couple elects to use a contraceptive means for the sake of avoiding the transmission of AIDS. The means they select is a means which achieves this end of avoiding the transmission of AIDS only by blocking the transmission of procreative matter. To put this in the language of the standard conditions for the application of the principle of double effect, the good effect is achieved only through the evil means.<sup>19</sup>

This directly contradicts one of the requisites of the PDE. Therefore, as Long points out, “one cannot reasonably choose – in relation to a specific conjugal act – to deploy means whose very nature is such as to deprive the conjugal act of its procreative character and then protest that this deprivation is a mere *consequence* of an act good in its species.”<sup>20</sup>

But if one were to entertain the possibility that this case could fall (again, it does not) under the provisions of the PDE, as Long does, it is further to be noted that the case would also fail to meet the other three conditions for a valid application of PDE. Thus, Long observes that here “the act is in itself bad (deliberately and by choice introducing means to render a particular and intended conjugal act to be infecund)”<sup>21</sup>

Furthermore, “the evil effect is sought by the agent and not only permitted, it is through the contraceptive character of the chosen means that the effect sought is actually obtained...the

---

harmful effects. 4. The beneficial effects must follow from the action at least as immediately as do the harmful effects (otherwise the harmful effects are the real means chosen to effect the good end).” Benedict Ashley, OP; Jean DeBlois, CSJ; Kevin O’Rourke, OP “*Health Care Ethics. A Catholic Theological Analysis*” 5<sup>th</sup> ed. (Washington, DC: Georgetown University Press, 2006), 54.

<sup>19</sup> Long, 109.

<sup>20</sup> *Ibid.*, 110.

<sup>21</sup> *Ibid.*, 110.

good effect of preventing the transmission of AIDS is achieved *through* an evil means of deliberately performing a conjugal act while choosing to impede its procreativity.”<sup>22</sup> Finally, *“there exists no proportion between the effects such that it could be permitted.”*<sup>23</sup>

## Conclusions: A Short Summary, Answers, and a Final Reflection.

As I proposed at the beginning of this work, the answer to the question of the moral permissibility of the use of condoms by couples infected with HIV rests, in the final analysis, upon an accurate description of the object of the moral act. In this regard I would like to repeat one crucial point whose proper understanding is absolutely necessary for a sound moral reasoning of any given moral case: *one cannot will or intend the means (finis operis) without therefore willing or intending its end.* This end is the intrinsic *telos* or finality of the object itself which the intention of the agent (*finis operantis*) cannot alter nor eliminate.<sup>24</sup>

Applying these conclusions to our case, we are now in position to answer the questions proposed at the beginning of this work: *Is it morally permissible for a fertile heterosexual married couple to use a condom with the intention of preventing spreading the HIV to the non-infected spouse?* According to my analysis, we would have to conclude that it is not permissible because *it is a contraceptive act of intercourse.* And it is a contraceptive act *by reason of its*

---

<sup>22</sup> *Ibid.*, 110.

<sup>23</sup> *Ibid.*, 111.

<sup>24</sup> When in the moral analysis the place of the object of the moral act is not understood in this way, one could easily fall into the not uncommon mistake of considering the object of the moral act only in its material or natural species, a sort of ‘pre-moral’ entity that is, as it were, elevated to the moral realm, and informed as good or evil only through the good or evil intention of the agent. At the root of this error there is a flawed epistemology. In the epistemology of Aristotle and Aquinas the object determines or informs the knowing faculties of the subject. Instead, in an epistemology much like the one proposed by Kant, it is the subject the one who determines or informs the object. Applied to our case, the intention of the agent ends up, as it were, ‘construing’ the object. This view is, of course, at odds with the moral tradition that it is not the intention but the object the first (not the only one, but certainly the first) determinant of the morality of the human act. See also Catechism of the Catholic Church nn., 1749-1756.

object: “the couple deliberately deploys a contraceptive means because by its contraceptive agency (blocking the seminal matter) they hope to avoid the transmission of AIDS.”<sup>25</sup>

Forty years after *Humanae Vitae*, Francis Cardinal Stafford, Major Penitentiary of the Apostolic Penitentiary, in a worth reading recently published article in *L'Osservatore Romano*, reflects on the anniversary of the Encyclical and the turbulent times surrounding its publication and emphatically reiterates the perennial validity of the teachings of Pope Paul VI – the teachings of the Holy Catholic Church – on this matter: “*The unitive and procreative meanings of marriage cannot be separated. Consequently, to deprive a conjugal act deliberately of its fertility is intrinsically wrong. To encourage or approve such an abuse would lead to the eclipse of fatherhood and to disrespect for women.*”<sup>26</sup>

---

<sup>25</sup> *Ibid.*, 109.

<sup>26</sup> Flannery O’Connor describes the significance of the virtue of purity for many Catholics at that time: “To see Christ as God and man is probably no more difficult today than it has been. ... For you it may be a matter of not being able to accept what you call a suspension of the law of the flesh and the physical, but for my part I think that when I know what the laws of the flesh and physical reality really are, then I will know what God is. We know them as we see them, not as God sees them. For me it is the virgin birth, the Incarnation, the resurrection which are the true laws of the flesh and the physical. Death, decay, destruction are the suspension of these laws. I am always astonished at the emphasis the Church places on the body. It is not the soul she says that will rise but the body, glorified. I have always thought that purity was the most mysterious of the virtues, but it occurs to me that it would never have entered human consciousness if we were not to look forward to a resurrection of the body, which will be flesh and spirit united in peace, in the way they were in Christ. The resurrection of Christ seems the high point in the law of nature.” O’Connor’s theology with its remarkably eschatological mark anticipates the teaching of the II Vatican Council, “The truth is that only in the mystery of the incarnate Word does the mystery of man take on light” (*Gaudium et Spes* 22).<sup>26</sup> Francis Cardinal Stafford, *l’Osservatore Romano*, July 25, 2008.

## Work Cited

- Ashley, Benedict OP; Deblois, Jean CSJ; O'Rourke, Kevin OP. *Health Care Ethics. A Catholic Theological Analysis*. 5<sup>th</sup> ed. Washington, DC: Georgetown University Press, 2006.
- Long, Steven. *The Teleological Grammar of the Moral Act*. Naples, FL: Sapientia Press, 2007.
- Guevin, Benedict O.S.B., and Rhonheimer, Martin. "On the Use of Condoms to Prevent Acquired Immune Deficiency Syndrome." *The National Catholic Bioethics Quarterly* V5, N1 (2005): 37-48.
- Oleson, Christopher. "Nature, "Naturalism," and the Immorality of Contraception A Critique of Fr. Rhonheimer on Condom Use and Contraceptive Intent." *The National Catholic Bioethics Quarterly* V6, N4 (2006): 719-730.
- Paul VI. *Humanae vitae*. Boston, MA: Pauline Books and Media, 1982.
- Rhonheimer, Martin. "The Truth about Condoms." *The Tablet* 258.8545 (July 10, 2004): 10-11.
- \_\_\_\_\_. "The Contraceptive Choice, Condom Use, and a Moral Argument Based on Nature: A Reply to Christopher Oleson." *The National Catholic Bioethics Quarterly* V7, N2 (2007): 273-292.
- Smith, Janet. "The Morality of Condom use by HIV-Infected Spouses." *The Thomist* 70 (2006): 27-69.