

# Anthony McCarthy

---

## Unintended Morally Determinative Aspects (UMDAS) : Moral Absolutes, Moral Acts and Physical Features in Reproductive and Sexual Ethics

---

Studia Philosophiae Christianae 51/2, 143-158

---

2015

Artykuł został opracowany do udostępnienia w internecie przez Muzeum Historii Polski w ramach prac podejmowanych na rzecz zapewnienia otwartego, powszechnego i trwałego dostępu do polskiego dorobku naukowego i kulturalnego. Artykuł jest umieszczony w kolekcji cyfrowej [bazhum.muzhp.pl](http://bazhum.muzhp.pl), gromadzącej zawartość polskich czasopism humanistycznych i społecznych.

Tekst jest udostępniony do wykorzystania w ramach dozwolonego użytku.

ANTHONY MCCARTHY

## UNINTENDED MORALLY DETERMINATIVE ASPECTS (UMDAS): MORAL ABSOLUTES, MORAL ACTS AND PHYSICAL FEATURES IN REPRODUCTIVE AND SEXUAL ETHICS

**Abstract.** Catholic sexual ethics proposes a number of exceptionless moral norms. This distinguishes it from theories which deny the possibility of *any* exceptionless moral norms (e.g. the proportionalist approach proposed in the aftermath of *Humanae Vitae* and condemned in *Veritatis Splendor*). I argue that Catholic teaching on sexual ethics refers to chosen physical structures in such a way as to make ‘new natural law’ theory inherently unstable. I outline a theory of “the moral act” (*Veritatis Splendor* 78) which emphasises the place which chosen physical features – in particular, chosen sexual structures – play in specifying human actions. I conclude that this account, involving what I term UMDAs, is needed to make sense of the Church’s teaching in these areas.

**Keywords:** Unintended Morally Determinative Aspects, intention, physical object, moral act, exceptionless moral norms, *Veritatis Splendor*, new natural law

If people know one thing about Catholic moral teaching, it is that it contains a number of exceptionless moral norms in the area of sexual ethics – more, in fact, of such exceptionless norms than are found in any other area of ethics. And it is these norms in this specific area which cause, in this highly sexualised age, the greatest outrage amongst people both within and without the Church.

Why might this be? Following Max Scheler, Karol Wojtyła notes the phenomenon of “resentment” which he defines as “a lack of objectivity in judgement and evaluation [that] has its origins in weakness of will.”

Wojtyła explains that “attaining or realizing a higher value demands a greater effort of will. So in order to spare ourselves the effort, to excuse our failure to obtain this value, we minimize its significance, deny it the respect which it deserves, even see it as in some way evil, although objectivity requires us to recognize that it is good.”

He continues: “Chastity, more than any other, seems to be the virtue which resentment has tended to outlaw from the soul, the will and the heart of man (...) chastity and sexual continence are seen above all as dangerous enemies of love.”<sup>1</sup>

The special significance of sex has been recognised by the greatest philosophers, artists and social historians, in opposition to those living in the wake of the sexual revolution who would claim (at least in public) that this area of morality is in no way special or unique.<sup>2</sup> And it is no coincidence that the theory propounded within the Catholic Church rejecting ‘moral absolutes’,<sup>3</sup> namely ‘proportionalism’, arose because of the Church’s reaffirmation of Her teaching that contraceptive acts are inherently morally wrong regardless of the circumstances in which they are performed. For proportionalism rejected the exceptionless moral norm regarding contraceptive acts and in doing so proposed a system that – like similar consequentialist systems – rejected the possibility of *all* exceptionless moral norms.<sup>4</sup>

---

<sup>1</sup> K. Wojtyła (Pope John Paul II), *Love and Responsibility*, trans. H.T. Willets, Fount, London 1982, 143–144.

<sup>2</sup> I leave to one side extreme sexual revolutionaries like Wilhelm Reich and Gyorgy Lukacs who actively promoted unchastity through ‘sex education’ as the best way to undermine religious belief and marriage.

<sup>3</sup> By which I mean: exceptionless negative moral norms. I leave to one side the question of *positive* moral absolutes such as obeying a positive direct command from God. Of course, a certain kind of consequentialist will himself hold *one* positive moral absolute; namely to ‘maximise good’ where good can be measured by a single scale. And he must do that whatever the consequences!

<sup>4</sup> For a striking philosophical defence of the reasonableness of exceptionless moral norms and the incoherence of various consequentialist critiques of them see N. Denyer,

*Veritatis Splendor* sounded the death knell for at least the ‘proportionalist’ kind of opposition to moral absolutes. Again, it is no coincidence that Karol Wojtyła, an important thinker in his own right on sexual ethics, was also the man who, as Pope, was to confront the proportionalist theories – theories which grew up around a rejection of traditional teaching on sex. That confrontation was particularly important because those Catholics practising and defending contraception were, necessarily, choosing to defy the Church, and not merely surrendering to episodic weakness of will in the face of unplanned and urgent sexual passions. The combined rejection of the authority of the Church and denial of the possibility of exceptionless moral norms came primarily in relation to sexual issues. These issues, perhaps more than any others, are bound up exceptionally closely with our bodily nature and its profound, intrinsic moral meaning.<sup>5</sup>

---

*Is Anything Absolutely Wrong?*, in: *Human Lives: Critical Essays on Consequentialist Bioethics* ed. D.S. Oderberg, J.A. Laing, MacMillan, Basingstoke 1997, 39–58.

<sup>5</sup> It is worth recalling how developments in the history of metaphysics, not least philosophical theories which radically truncate the scope of metaphysical knowledge, have led to the kind of deep problems philosophers have had in relation to ethics generally and sexual ethics in particular: “According to St Thomas, the physical order was essentially made up of ‘natures’, that is to say, active principles, which were the cause of the motions and various operations of their respective matters. In other words, each nature, or form, was essentially an energy, an act. Now it is an obvious fact that such a world was no fit subject for a purely mechanical interpretation of physical change; dimensions, positions, distances are by themselves clear things; they can be measured and numbered; but those secret energies that had been ascribed to bodies by Aristotle and St Thomas, could not be submitted to any kind of calculation. (...) Descartes could not possibly tolerate such a nuisance. Forms, natures and energies had to be eliminated then from the physical world, so that there should be nothing left but extension and always an equal amount of motion caused by God.” E. Gilson, *The Unity of Philosophical Experience*, Four Courts Press, Dublin 1982, 203–204.

Displacing the role of metaphysics with regard to ethics has serious consequences with regard to thinking about sexual ethics and the ethics of homicide. Without an adequate metaphysics the body may end up being dissolved into parts. Neglecting deep consideration of the body’s meaning and what that meaning practically implies, failing to pay due attention to natural kinds, formal causes, final ends, the teleological nature of our bodies and of the universe itself unsurprisingly leads to radically ‘thin’ accounts of sexual ethics.

‘New Natural Lawyers’ such as Germain Grisez, John Finnis, Joseph Boyle and Robert P. George, who have vigorously defended Catholic sexual ethics from critics

*Veritatis Splendor* (VS 74) tells us that ‘proportionalism’ holds: “The criteria for evaluating the moral rightness of an action are drawn from *weighing of the non-moral or pre-moral goods* to be gained and the corresponding non-moral or pre-moral values to be respected. For some, concrete behaviour would be right or wrong according as whether or not it is capable of producing a better state of affairs for all concerned.”

VS, in condemning such a view, does not, of course, claim that the consequences of an action cannot be relevant in appraising its moral

---

both in and outside the Church, may argue that the theory they defend does not differ in its metaphysical worldview from other Catholic natural law approaches. For they contend (Finnis especially) that it is only by coming to know basic human goods that we can come to know adequately the metaphysics of human nature. Finnis holds that this is strictly entailed by Aquinas’s repeated epistemological principle that one knows natures only by knowing capacities, and capacities only by understanding the actions for which they are the capacities, and only understands the actions by knowing their objects – and the objects of human actions are intelligible goods (at their various levels of specificity – see the table in: J. Finnis, *Aquinas: Moral, Political and Legal Theory*, Oxford University Press, Oxford 1998, 71 or Finnis’s critique of Fr Kevin Flannery in: *Reason, Morality and Law*, ed. J. Keown, R.P. George, Oxford University Press, Oxford 2013, 491). Against this, it must however be asked why it is that when it comes to some questions, at least, concerning ‘physical structures’, such as the moral liceity of craniotomy discussed below, proponents of the New Natural Law approach reach such very different conclusions from their more traditional critics. I take this opportunity to thank John Finnis for his incisive and very helpful comments on an earlier draft of this paper.

A powerful critique of the New Natural Law interpretation of Aquinas, the good and human nature is Lawrence Dewan, *St. Thomas, Our Natural Lights and the Moral Order*, in L. Dewan, *Wisdom, Law, and Virtue: Essays in Thomistic Ethics*, Fordham University Press, New York 2008, 199–213. Dewan rightly points out, citing many texts from Aquinas, that even though a Thomist must grant that “ethics is prior to metaphysics in the order of learning, it is an ethics feeding on the sapiential seeds, conceived as Thomas conceives them; and the metaphysician does not merely *append* [Finnis talks of the ‘natural’ as a “speculative appendage” from the point of view of ethics] his observations but is able to tell the ethicist what has been feeding his ethical reflections all along, and what the preethical human spirit already has somehow grasped.” Dewan goes on to claim that “Reason puts nature first, not precisely because nature reveals its divine origin, but because reason sees ontological priority. Goodness is seen in ontological order, and reason’s giving nature priority is the recognition of that order. The ontologically determinate (i.e., nature) has more of the aspect of being than has the ontological determinable (the operable or choosable).” *Ibid.*, 212.

goodness or badness – merely that such consequences are not necessarily a decisive criterion when such an appraisal is made.

VS 48 explains what the proportionalist means by ‘pre-moral’ goods, in the context of considerations of the place of the body in questions concerning natural law: “A freedom which claims to be absolute ends up treating the human body as a raw datum, devoid of any meaning and moral values until freedom has shaped it in accordance with its design. Consequently, human nature and the body appear as *presuppositions or preambles*, materially *necessary* for freedom to make its choice, yet extrinsic to the person, the subject and the human act. Their functions would not be able to constitute reference points for moral decisions, because the finalities of these inclinations would be merely »*physical*« goods, called by some »pre-moral«. To refer to them, in order to find in them rational indications with regard to the order of morality, would be to expose oneself to the accusation of physicalism or biologism.”<sup>6</sup>

Bearing all of this in mind then, what might be more central criteria for moral assessment – criteria that allow for the possibility of exceptionless moral norms? VS 78 states, referring to St Thomas Aquinas’s discussion of human action at *Summa Theologiae* I–II, q. 18, a. 6: “*The morality of the human act depends primarily and fundamentally on the “object” rationally chosen by the deliberate will (...)*. In order to be able to grasp the object of an act which specifies that act morally, it is therefore necessary to place oneself *in the perspective of the acting person*. The object of the act of willing is in fact a freely chosen kind of behaviour. To the extent that it is in conformity with the order of reason, it is the cause of the goodness of the will; it perfects us morally, and disposes us to recognize our ultimate end in the perfect good, primordial love. By the object of a given moral act, then, one cannot mean a process or an event of the merely physical order, to be assessed on the

---

<sup>6</sup> R.P. George claims that John Paul II “specifically rejects” the ‘perverted faculty’ argument in sexual ethics at VS 48. However, this is not the case: what John Paul II refers to here is any view which makes the body and its faculties *external to the person*: something ‘biological’ in a purely physicalist sense and thus without inherent moral significance. This is precisely the opposite of what the traditional moral theology manuals, in particular, say about human nature. R.P. George, *In Defense of Natural Law*, Clarendon Press, Oxford 1999, 181, note 2.

basis of its ability to bring about a given state of affairs in the outside world. Rather, that object is the proximate end of a deliberate decision which determines the act of willing on the part of the acting person.”

VS 78 goes on to explain: “The reason why a good intention is not itself sufficient, but a correct choice of actions is also needed, is that the human act depends on its object, whether that object is *capable or not of being ordered* to God, to the One who »alone is good«, and thus brings about the perfection of the person.”

This crucial passage tells us some significant things. Clearly the moral object of the human act needs to be understood in terms of how the agent deliberately chooses to locate him or herself in relation to an end, a choosing of which sets his/her will in a way which has an intransitive significance<sup>7</sup> which has a relation to reason and necessarily to our final end.

Stephen Brock, in an important paper,<sup>8</sup> has noted that VS 78 by talking of the “merely physical order” makes clear that it rejects the proportionalist view that a “proximate end” (i.e. that which we immediately intend, regardless of our *further* end) can be reduced to a ‘pre-moral’ state of affairs or event. Rather, VS 78 insists that the proximate end cannot be reduced in this way insofar as it has a moral object of its own – a target relating to the order of reason, no less than any further end the person may have. In contrast, if exceptionless moral norms can only apply to the moral object of a human act and if there are no determinative moral objects for human acts then there can be no exceptionless moral norms covering determinative moral objects.<sup>9</sup>

---

<sup>7</sup> For a discussion of ‘transitive’ and ‘intransitive’ significance see K.Wojtyła, *The Acting Person: A Contribution to Phenomenological Anthropology*, transl. A. Potocki, D. Reidel Publishing Company, Inc., Dordrecht 1979.

<sup>8</sup> S.L. Brock, *Veritatis Splendor 78, St. Thomas, and (Not Merely) Physical Objects of Moral Acts*, *Nova et Vetera (English Edition)* 6(2008)1, 1–62.

<sup>9</sup> G.E.M. Anscombe observes that absolute prohibitions are inextricably bound up with the principle of double effect and that without the principle any act might be justified. G.E.M. Anscombe, *War and Murder*, in: *Ethics, Religion and Politics: Collected Philosophical Papers Volume III*, Basil Blackwell, Oxford 1981, 58. Perhaps, however, the making/allowing distinction might be sufficient for there to be moral absolutes, though Anscombe seems to think that more is required and that without the principle

I take it that proportionalism is, ultimately, an incoherent philosophical theory, as many critics have strongly argued.<sup>10</sup> However, one approach to critiquing proportionalism in the name of moral absolutes has contained – alongside genuine insights, not least on the scope and significance of intention – other aspects which are, I believe, harmful to Catholic moral thinking, not least because this critique presents itself as in full harmony with what is stated in *VS*.

This approach holds that the moral object of the act for the acting person just *is* the intentional structure of the proximate end and nothing more. Proponents of this view, most famously proponents in the ‘New Natural Law’ tradition, will often justify it by saying that those who would argue that a physical nature can play a formal role in specifying the moral nature of the object even where a relevant aspect of that physical nature (say, the non-procreative character of its structure) is not intended *as such* are somehow understanding by the object the very ‘merely physical’ object/event that *VS* was concerned to exclude in rejecting proportionalism.

In contrast, other writers argue that a physical nature *can* enter formally into the constitution of a moral act and its object even where the agent does not intend precisely that aspect of the physical that ultimately makes the agent’s choice morally wrong. An agent may choose to act for an object formally described (intended), but in doing so brings about certain material events or features of those events, which he need not have intended but may have foreseen. The New Natural Law approach to action theory, best expressed in an influential paper co-authored by

---

of double effect we can’t have moral absolutes. For a sophisticated and unsympathetic critique of double effect reasoning see J. Bennett, *The Act Itself*, Oxford University Press, Oxford 1995. For robust defences of double effect reasoning see M. Murphy, *Intention, Foresight and Success*, in: *Human Values: New Essays on Ethics and Natural Law*, ed. D.S. Oderberg, T. Chappell, Palgrave MacMillan, New York 2007, 252–269; J. Garcia, *Intention in Medical Ethics*, in: *Human Lives: Critical Essays on Consequentialist Bioethics*, ed. D.S. Oderberg, J.A. Laing, MacMillan, Basingstoke 1997, 161–182; J. Garcia, *The Doubling Undone? Double Effect in Recent Medical Ethics*, *Philosophical Papers* 36(2007)2, 245–270.

<sup>10</sup> See for example the paper by Josef Seifert collected in this volume.

John Finnis, Germain Grisez and Joseph Boyle,<sup>11</sup> must deny that certain unintended side-effects can have a central and morally conclusive role in the description of certain kinds of act.

Stephen Brock has suggested that if the physical *can't* play this role then we consign “everything physical about what we do to the domain of the

---

<sup>11</sup> J. Finnis, G. Grisez, J. Boyle, “Direct” and “Indirect”: *A Reply to Critics of Our Action Theory*, *Thomist* 65(2001), 1–44. The defence of craniotomy in this paper seems to contradict an earlier position taken by John Finnis with regard to the principle used in assessing the morality of a surgeon’s treating the bodily substance of another human person as a mere subhuman object by subjecting that person to lethal organ harvesting – see J. Finnis, *Intentions and Side-Effects*, in: *Liability and Responsibility: Essays in Law and Morals*, ed. R.G. Frey, Ch. W. Morris, Cambridge University Press, Cambridge 1991, 60–61. In the most recent version of this paper (in J. Finnis, *Intention and Identity: Collected Essays*, Volume 2, Oxford University Press, Oxford 2011, 173–198 (at 196–197), Finnis denies that there is any contradiction between the two positions and says with regard to the surgeon case “My discussion fails to consider sufficiently whether the surgeon’s intent, which does not include death, does include mutilation – violation of bodily integrity as a means. In the postulated case the removal of the heart is a means to advance medical knowledge; in routine cases of exceptionlessly wrongful mutilation the impairment of function and violation of integrity is a means, e.g. to facilitation of begging, not an end, e.g. when done out of a grudge. (...) What is decisive for the intention-and act-analysis in such cases is whether the bodily position or activity of person V is itself a threat to the well-being of another or other persons and the cutting into or dismemberment of V is a means of mitigating that threat.” Finnis makes clear in the following endnote that he restricts the term ‘moral absolutes’ (exceptionless moral norms) to “norms which exceptionlessly exclude a kind of act specified by its object, that is its intention.” In which case, craniotomy cannot be condemned as violating an exceptionless moral norm.

Finnis believes that this clarification resolves any apparent inconsistency, but his clarified position can only convince if we assume that there is no such thing as an unintended yet morally determinative aspect to an act such as lethal organ harvesting. If lethal bodily invasion of an innocent person is such an aspect then this will mean that both the surgeon case and the craniotomy case violate an exceptionless moral norm, for the UMDA, though by definition unintended, is part of the moral object of the act (on one understanding of ‘object’ which is not confined to ‘end’ but concerns in effect the state of affairs the end targets).

For more on the issues raised here see H. Watt, *Beyond Double Effect: Side Effects and Bodily Harm*, in: *Human Values: New Essays on Ethics and Natural Law* ed. D.S. Oderberg, T. Chappell, Palgrave MacMillan, New York 2007, 236–252 and S.L. Brock, *Action and Conduct: Thomas Aquinas and the Theory of Action*, T&T Clark, Edinburgh 1998.

praeter-intentional, and so ultimately to the ‘merely premoral’ domain.” That said, Brock also stresses that “if indeed a physical nature can play a role, it will only be insofar as the role is conferred upon it by reason. Reason is the *first* formal principle of human acts. All others depend on it.”<sup>12</sup>

New Natural Lawyers can, however, rebut Brock’s statement regarding consignment of the physical to the pre-moral domain, given that *some* physical features may, after all, be intended by the agent. For New Natural Lawyers hold that physical nature *can and does* play a role for every *intended means and end* included in the agent’s proposal – in particular, every physical structure and causality from which the agent thinks that he can benefit. Moreover, they can also hold that such physical structures are the normally overwhelmingly intra-intentional structure of the human act, and dominate its moral assessment accordingly. For these writers, reason is the first formal principle of human acts, yet they hold that this precludes physical structures playing a role outside the structure of the proposal shaped by reason and adopted by choice.

However, it is surely a mistake for the New Natural Lawyers to assume that certain physical ‘side-effects’ cannot have a morally conclusive role in the description of certain kinds of act. I prefer to call these ‘side-effects’ by another term – Unintended Morally Determinative Aspects (UMDAs) – since the term ‘side-effect’ may confuse as denoting both side-effects which are morally determinative of the act through entering into its moral object and side effects which play no such morally determinative role in themselves.

Even where New Natural Lawyers see certain chosen physical structures as morally conclusive, the question still arises what it is about those structures – something that may not itself be part of the agent’s intentions – that *makes* them morally conclusive. For example, if certain sexual structures are seen as morally wrong to choose because they are non-procreative in kind, their wrongness need not rest on their being intended *qua* non-procreative (an issue to which we will return). To choose the structure itself is not necessarily to choose the fact that the structure is non-procreative, even if one knows not only that it is non-procreative but that this makes it wrong to choose.

---

<sup>12</sup> S.L. Brock, *op. cit.*, 15.

Importantly VS says only that the object of choice cannot belong *solely* to the physical order: a trivially true statement. And it should hardly surprise us that Wojtyła, who more than anyone else in the world is associated with phrases like ‘the nuptial meaning of the body’, did *not*, as Pope, rule out as merely pre-moral that which can in fact play a formal role in the constitution of the moral act and its object.

Nowhere does this become more obvious than in the area of sexual ethics. The Church has always held that certain sexual acts are *contra naturam* (e.g. sodomy, masturbation, use of barrier contraception). What makes these acts wrong is the way they involve the use of sexual capacities in a sense quite different from acts of normal uncontracepted heterosexual intercourse. For with the acts first mentioned, it is enough to know that a particular physical structure has been chosen: that is, the physical kind deliberately targeted determines the moral kind as well. These acts relate to reason differently from an act of normal heterosexual intercourse, about which we need to ask further questions to see if it is morally right or wrong, such as whether the couple are validly married. This last issue is an example of a *non*-physical UMDA in relation to someone engaged in sexual relations with another. If the couple are not married, then this aspect of what they are doing is enough to make their act morally wrong even though the couple are not precisely intending (as opposed to foreseeing) that their sexual relations will be non-marital. Interestingly, use of non-barrier ‘contraception’ such as the Pill, since it does not affect the structure of intercourse itself, is also something about which we need to ask further questions, such as whether contraception as opposed to some other physical effect is intended, or whether the motive in taking the Pill is, in fact, non-contraceptive.

An example in sexual ethics of the dangers of ignoring the formal role a physical kind can play in determining a moral object can be found in the work of Germain Grisez, who writes: “While self stimulation to obtain a semen sample is physically the same as any other masturbation, it is morally different [i.e. because the aim is not to obtain orgasm].”

Grisez adds, however, that “obtaining a semen sample in this way is a grave matter, for it is a proximate occasion of grave sin (the more

or less probable sexual fantasy and willing of the experienced sexual satisfaction).”<sup>13</sup>

This passage makes clear that Grisez does not locate the wrongness of certain kinds of solitary sexual activity in physical structures intended by the agent (whatever the *further* intention of the agent) but rather in what he presumes to be the likely willed experience of certain sexual fantasies and pleasures. Detaching this condemnation from any clear account of what is wrong in ‘the act itself’ makes it hard to see why anyone should accept the condemnation: if it is wrong to seek the function of sexual pleasure outside its proper holistic context, why would it not be wrong to seek another sexual function such as ejaculation outside this context? In contrast, locating the wrong in the misuse of a natural faculty, though one of unique social importance, helps explain why taking deliberate pleasure in solitary activity might be part of the wrong of such ‘truncated’ activity, as well as accounting for the wrongness of sexual acts which have no accompanying pleasure or fantasy, but nonetheless share functional features in common with acts which do.<sup>14</sup> And it should come as no surprise that Pope Pius XII twice confirmed masturbation as morally illicit in all circumstances precisely on the grounds of its misuse of a natural faculty, regardless of the agent’s further intention.<sup>15</sup>

Grisez’s approach to this question, and his influential approach to action theory in general, makes it hard to see why, for example, the use of condoms solely to prevent the transmission of HIV through sexual intercourse is absolutely morally excluded, as many have argued<sup>16</sup> and as Grisez and his collaborator John Finnis believe. Grisez and others

---

<sup>13</sup> G. Grisez, *The Way of the Lord Jesus Volume Two – Living a Christian Life*, Franciscan Press, Quincy University, Quincy IL 1993, 648, note 187.

<sup>14</sup> This passage makes use of material first published in A. McCarthy, *Marriage and Meaning*, in: *Fertility and Gender: Issues in Reproductive and Sexual Ethics* ed. H. Watt, Anscombe Bioethics Centre, Oxford 2011, 45–70, especially 51.

<sup>15</sup> Pope Pius XII, Address to delegates, 26th Congress of Urology, 8 Oct. 1953; address to 2nd World Congress on Fertility and Sterility, 19 May 1956.

<sup>16</sup> For a philosophical argument against the permissibility of using condoms for HIV prevention see A. McCarthy, A. Pruss, *Condoms and HIV Transmission*, in: *Fertility and Gender: Issues in Reproductive and Sexual Ethics* ed. H. Watt, Anscombe Bioethics Centre, Oxford 2011, 157–169.

from the New Natural Law perspective might argue that to intend the physical blockage is already to intend something wrong: something which is contrary to the good of marriage because the act has been rendered non-procreative/non-unitive in kind. And yet, an agent blocking the sexual act in such a way that it cannot constitute an act of a procreative/unitive kind (a necessary condition for it being a morally good sexual act) may agree he is intending a blockage – albeit for prevention of HIV transmission – but say that this is a mere ‘physical structure’ and that he is not intending against any basic good, such as marriage or procreation. So, although Grisez does in fact oppose the use of condoms to prevent HIV transmission, it is hard to see how he can do this without conceding that a physical kind not intended precisely *qua* non-procreative *can* play a formal role in determining the moral object of the act. And it is particularly noteworthy when it comes to sexual ethics that it is here, *par excellence*, that (intended) physical structures do generate exceptionless moral norms. This should not be surprising if we take the moral meaning of the body and of bodily acts seriously.

Ignoring the importance of the body in this way is fatal for sexual ethics: if masturbation, for example, is sometimes permissible, traditional Catholic sexual ethics can have no coherence whatsoever. It is also fatal for other areas of ethics. New Natural Lawyers and others, most recently Martin Rhonheimer, have defended certain practices in obstetrics which the Church has several times condemned.<sup>17</sup> These include craniotomy (the crushing and emptying of a baby’s skull, often done in the past when the baby is trapped in the birth canal) and the bodily invasion and forcible removal of pre-viable babies – again in order to

---

<sup>17</sup> Finnis, Grisez and Boyle argue in *Direct and Indirect* that the Church has never authoritatively condemned the practice of craniotomy. I respectfully disagree and refer readers to K. Flannery, *Vital Conflicts and the Magisterial Tradition*, National Catholic Bioethics Quarterly 11(2011)4, 691–704 and my own brief paper, *Pre-viability inductions in vital conflict cases: are they really morally permissible?*, Catholic Medical Quarterly 64(2014)1, 13–17. See also chapter 15 of J. Connery, *Abortion: the Development of the Roman Catholic Perspective*, Loyola Univ. Press, Chicago 1977. I leave to one side the wisdom of publicly, as opposed to privately, advocating positions allowing craniotomy: a procedure still practised on babies during obstructed labour in some parts of the world.

save the life of the mother. Admittedly, the baby's death need not be intended as such in these cases; however, even if the doctor does not intend to kill the baby, he does intend a bodily invasion of the unborn child, of a kind which is in fact lethal. And isn't such an act unjust to the child? After all, his/her bodily integrity is grossly violated and he/she is deliberately deprived of what he/she relies on<sup>18</sup> to continue to exist. The baby's skull is indeed, as David Crawford has pointed out, 'the person' and not a mere part.<sup>19</sup> And that person is violated by a deliberate invasion of his/her body of a lethal kind. Similarly a doctor operating on a dying, unconscious person in order to extract a vital organ to give it to someone else might not be intending to kill or even harm the person by lethally cutting into him/her – but is necessarily committing a gross

---

<sup>18</sup> Violation of bodily integrity in the manner suggested would be wrong even if it didn't accelerate death, because of the way in which it treats another person: not all mutilation is death-hastening. In their discussion of craniotomy in *Direct and Indirect*, Finnis, Grisez and Boyle raise the question "to what extent the life of the unborn child "depends on" not being subjected to craniotomy..." They claim that this is "far from clear in the obstetric emergency we are considering – a situation in which the child is expected to die no matter what is done." (J. Finnis, G. Grisez, J. Boyle, "Direct" and "Indirect": A Reply to Critics of Our Action Theory, in: *Thomist* 65(2001), 26, note 38). This very surprising statement appears to hold that the life of the unborn child is somehow less dependent upon his having an intact skull if he is soon to die anyway. We would not say of someone who, minutes from death, were to have his skull smashed by another (possibly in order to save the life of a third party) that it is doubtful that the victim 'depended on' his skull to stay alive as he is expected to die whatever happens.

<sup>19</sup> D.S. Crawford, *Experience of Nature, Moral Experience: Interpreting Veritatis Splendor's "Perspective of The Acting Person"*, *Communio* 37(2010), 277–278. I would, however, take issue with the aspect of Crawford's article which identifies the craniotomist's intention as necessarily being an intention to kill. Such a view makes a nonsense of standard distinctions between intentions and side-effects which Crawford would surely accept (e.g. giving morphine to a dying patient to alleviate suffering need not be done with an intention to shorten life). "In truth, this "change" or "reshaping" ("person-narrowing") entails the choice to change the baby into something other than a baby, for it is only a new substantial form – that of a corpse – that would be compatible with delivery. But this is just another way of saying that the doctor is in fact choosing to kill the baby". Contra Crawford, it needn't be the case that someone cutting into another in order to remove his heart (for example) is intending to create 'a heartless person', any more than a bicycle thief is necessarily intending, as he steals a bicycle, to create a bicycleless owner. In either case they can simply intend to remove.

lethal bodily violation of the person of a kind that cannot be anything other than unjust. There is a state of affairs – an ‘object’ – which is illicitly targeted here, even if not all morally determinative aspects of that state of affairs are intended as such.

In other words (and to conclude): we must not forget the meaning of the body: the physical has a crucial role to play, both in and outside of sexual ethics. Only by artificially denuding the physical world – or at least some aspects of the physical world – of meaning are we tempted to think that certain intended structures are inconclusive, so long as we do not intend an aspect of these structures seen as uniquely problematic. Many harmful things, after all, are not intended precisely qua harmful, but are intrinsically wrong for all that. And the sexual capacity in particular has a profound relation to reason, or, as Brock neatly puts it, “it has its own nature and it is part of human nature. It cannot but have a moral meaning.”<sup>20</sup>

#### REFERENCES

- Anscombe G.E.M., *War and Murder*, in: G.E.M. Anscombe, *Ethics, Religion and Politics: Collected Philosophical Papers*, Volume III, Basil Blackwell, Oxford 1981, 51–61.
- Bennett J., *The Act Itself*, Oxford University Press, Oxford 1995.
- Brock S.L., *Action and Conduct: Thomas Aquinas and the Theory of Action*, T&T Clark, Edinburgh 1998.
- Brock S.L., *Veritatis Splendor 78, St. Thomas, and (Not Merely) Physical Objects of Moral Acts*, *Nova et Vetera (English Edition)* 6(2008)1, 1–62.
- Connery J., *Abortion: the Development of the Roman Catholic Perspective*, Loyola Univ. Press, Chicago 1977.
- Crawford D.S., *Experience of Nature, Moral Experience: Interpreting Veritatis Splendor's "Perspective of The Acting Person"*, *Communio* 37(2010), 277–278.

---

<sup>20</sup> S.L. Brock, *op. cit.*, 62. See also 1 Corinthians 6.15–20.

- Denyer N., *Is Anything Absolutely Wrong?*, in: *Human Lives: Critical Essays on Consequentialist Bioethics*, ed. D.S. Oderberg, J.A. Laing, MacMillan, Basingstoke 1997, 39–58.
- Dewan L., *St. Thomas, Our Natural Lights and the Moral Order*, in: L. Dewan, *Wisdom, Law, and Virtue: Essays in Thomistic Ethics*, Fordham University Press, New York 2008, 199–213.
- Finnis J., *Aquinas: Moral, Political and Legal Theory*, Oxford University Press, Oxford 1998.
- Finnis J., *Intentions and Side-Effects*, in: *Liability and Responsibility: Essays in Law and Morals*, ed. R.G. Frey, Ch. W. Morris, Cambridge University Press, Cambridge 1991, 32–65.
- Finnis J., Grisez G., Boyle J., “Direct” and “Indirect”: *A Reply to Critics of Our Action Theory*, *Thomist* 65(2001), 1–44.
- Finnis J., *Intention and Identity: Collected Essays*, Volume II, Oxford University Press, Oxford 2011, 173–198.
- Flannery K., *Vital Conflicts and the Magisterial Tradition*, in: *National Catholic Bioethics Quarterly*, 11(2011)4, 691–704.
- Garcia J., *Intention in Medical Ethics*, in: *Human Lives: Critical Essays on Consequentialist Bioethics*, ed. D.S. Oderberg, J.A. Laing, MacMillan, Basingstoke 1997, 161–182.
- Garcia J., *The Doubling Undone? Double Effect in Recent Medical Ethics*, in: *Philosophical Papers*, 36(2007)2, 245–270.
- George R.P., *In Defense of Natural Law*, Clarendon Press, Oxford 1999.
- Gilson E., *The Unity of Philosophical Experience*, Four Courts Press, Dublin 1982.
- Grisez G., *The Way of the Lord Jesus Volume Two – Living a Christian Life*, Franciscan Press, Quincy University, Quincy IL 1993.
- Keown J., George R.P., *Reason, Morality and Law*, Oxford University Press, Oxford 2013.
- McCarthy A., Pruss A., *Condoms and HIV Transmission*, in: *Fertility and Gender: Issues in Reproductive and Sexual Ethics*, ed. H. Watt, Anscombe Bioethics Centre, Oxford 2011, 157–169.
- McCarthy A., *Marriage and Meaning*, in: *Fertility and Gender: Issues in Reproductive and Sexual Ethics*, ed. H. Watt, Anscombe Bioethics Centre, Oxford 2011, 45–70.

- McCarthy A., *Pre-viability inductions in vital conflict cases: are they really morally permissible?*, *Catholic Medical Quarterly*, 64(2014)1, 13–17.
- Murphy M., *Intention, Foresight and Success*, in: *Human Values: New Essays on Ethics and Natural Law*, ed. D.S. Oderberg, T. Chappell, Palgrave MacMillan, New York 2007, 252–269.
- Watt H., *Beyond Double Effect: Side Effects and Bodily Harm*, in: *Human Values: New Essays on Ethics and Natural Law*, ed. D.S. Oderberg, T. Chappell, Palgrave MacMillan, New York 2007, 236–252.
- Wojtyła K., *The Acting Person: A Contribution to Phenomenological Anthropology*, transl. A. Potocki, D. Reidel Publishing Company, Inc., Dordrecht 1979.
- Wojtyła K., *Love and Responsibility*, transl. H.T. Willets, Fount, London 1982.