

Ethical Sex

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Sexual Choices and their Nature and Meaning

Anthony McCarthy



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Table of Contents

Preface	1
Acknowledgements	7
Introduction	10
<i>Thick or thin?; Specialness of sex; Rape; The rape of Lucretia; Rape, shame, guilt; Sex and phenomenology.</i>	
1. Contraception as Contralife	34
<i>Basic goods; Incommensurability; The contraceptive act; Necessarily contralife; Possible persons; Masek's defence; Rape case; Conclusion.</i>	
2. Natural Law, Functions, Teleology	66
<i>Natural law and practical rationality; Naturalists; Anti-Naturalists; Teleology; Functions, flourishing and the good; The good; Applications; Unity, goods and enjoyment; Reproductive organs; Clarifying perverse use of faculties; Sterilisation; Conclusion.</i>	
	101
3. Marriage and Meaning	
<i>Meaning as social construct; Species of act; Marriage as standard; Sacramental marriage; Natural marriage; Role of marriage; Quasi-marital arrangements; Designing marriage; Substitutionary sex; Privileged acts; Counterarguments; Role of sex in marriage; Substitutionary sex and society; Conclusion.</i>	

4.	Marital Willing	127
	<i>Conditional and preparatory intentions and the good of marriage; Conclusion.</i>	
5.	Sexual Desire	141
	<i>Setting the heart; Bad desires; Dynamic of lust; Felt desire, informed desire – desire, choice and cognition; Willed and un-willed desire; Intentions and evaluating prospective acts; Hate crimes: Bad motivating desires; Fantasy; Teleology of desire; Plain sex; Functionality again; Conclusion.</i>	
6.	Love, Virtue and Vice	169
	<i>Love; Affirmation of beloved's existence; Unconditional love; Three aspects of love; Procreative union; One flesh: instrumental to procreation; Objectification; Objectification in and outside the sexual arena; Sexual arousal and sexual interest; Morally problematic low-level desires; Appreciating erotic goods; The primacy of the virtuous; What are virtues?; Sexual virtue and the common good; The common good; Chastity and roles; Conclusion.</i>	
	Appendix	208
	Notes	220
	Bibliography	307
	Index of Names	323

Chapter 1

Contraception as Contralife

“If anyone for the sake of fulfilling sexual desire or with premeditated hatred does something to a man or to a woman, or gives something to drink, so that he cannot generate, or she cannot conceive, or offspring be born, let it be held as homicide.”

Pope Gregory IX¹

In their paper “‘Every Marital Act Ought to Be Open to New Life’: Toward a Clearer Understanding,”² the influential Catholic philosophers Germain Grisez, Joseph Boyle, John Finnis, and William May (hereafter GBFM) propose an argument that they believe will (i) explain what constitutes a contraceptive act and (ii) explain why such acts are always morally impermissible. Their argument attempts to explain the wrongness both of contraceptive acts within marriage, and of contraceptive acts outside of marriage, by reference to the ‘contralife’ character of such acts in the context of what is known as the New Natural Law Theory.³

It may come as a surprise to readers that this opening chapter is concerned with somewhat more abstract matters concerning the general approach to moral reasoning proposed by these authors. However, the experiences people may have with sexual value/disvalue and the importance such values may occupy in human life are not to be understood in a vacuum, but need to be somehow

situated in a general theory of ethics. Beginning with the GBFM argument is useful in opening the discussion, even if some aspects of GBFM's overall theory and its application to sexual ethics may fail to convince on closer examination.

The framework for GBFM's argument involves a method of evaluating individual human acts (which, for these writers, necessarily involve some kind of choice) in terms of certain aspects of human fulfilment or 'basic human goods'.⁴ What makes the GBFM paper distinctive is GBFM's separation for purposes of moral evaluation of contraceptive acts from acts of sexual intercourse, and their refusal to analyse these two acts as one and the same human act—i.e. an act of contraceptive sex.

Another distinctive feature of GBFM's argument that contraception is necessarily contralife is that it does not rely on any prior theory of what constitutes specifically *marital* goods in the light of which contraception must be assessed.⁵

Basic Goods

To see the GBFM paper in its proper context it is necessary to outline briefly the authors'⁶ more general theory of the basic goods—sometimes referred to as the 'New Natural Law Theory' or theory of the Grisez-Finnis school. Adopting as a starting point and directive for action Thomas Aquinas's⁷ formulation of the self-evident first principle of practical reasoning that "the good is to be pursued; the bad is to be avoided" (a principle which plays a role analogous to that played by the principle of non-contradiction for theoretical reasoning) the theory proposes that careful reflection on what motivates human agents, regardless of location or time, reveals a limited variety of real basic intelligible human goods (values) which are realisable for human beings. The list of these basic

goods is made up of the most general and distinguishable features of human activities that constitute human flourishing. These ‘basic goods’ are, in the words of Germain Grisez, “aspects of persons, not realities apart from persons...the basic goods by which they [persons] enjoy self-fulfilment must be aspects of persons, not merely things they have.”⁸ The practical intellect (as opposed to the speculative intellect) is said to grasp these basic human goods directly in non-inferential acts of understanding. These basic human goods correspond to the “inherent complexities of human nature.”⁹

The basic goods are, as one commentator surmises, “kinds of goods that we can intelligibly conceive any or every human agent as acting *towards* or *for the sake of*, in and of themselves, and with no further objective beyond those goods in mind.”¹⁰ They are, in other words, non-instrumental goods (although they may also be used instrumentally). John Finnis categorises these basic forms of human goods as Life, Knowledge, Play, Aesthetic Experience, Sociability (friendship), Practical Reasonableness, and ‘Religion.’¹¹ As the basic goods provide ultimate reasons for acting they are, according to the Grisez-Finnis school, incommensurable. In other words, instantiations of differing basic goods present in options for choice cannot be weighed up against one another; for each can be a distinct and ultimate reason for acting. There is no more fundamental good by which we compare the relative values of the basic goods.

Practical Reasonableness is one of these basic goods, and from its requirement (namely the ‘self-evident’ principle that good be done and pursued and evil be avoided) the Grisez-Finnis school derives a series of practically applicable moral principles which Finnis terms the Basic Requirements of Practical Reasonableness.¹²

Contraception as Contralife

Practical Reasonableness, in the words of Finnis, "...both is a basic aspect of human well-being and concerns one's participation in all the (other) basic aspects of human well-being."¹³

Given that the purpose of practical reasonableness is to advance human flourishing, to act directly against (i.e. to destroy, damage or impede) any aspect of human flourishing is of itself practically irrational. The Grisez-Finnis school therefore holds, as *one* of the basic requirements of Practical Reasonableness, that one can never be morally right in choosing directly against a basic human good. One may pursue a basic human good in action, or one may at least respect it (i.e. not damage it), but may *never* choose to damage such a good. As Finnis observes in *Natural Law and Natural Rights*:

Reason requires that every basic value be at least respected in each and every action. If one could ever rightly choose a single act which *itself* damages and *itself* does not promote some basic good, then one could rightly choose whole programmes and institutions and enterprises that themselves damage and do not promote basic aspects of well-being, for the sake of their 'net beneficial consequences'.¹⁴

GBFM take it that to aim for 'net beneficial consequences' is to adopt an incoherent general objective for action, because the incommensurability of the basic goods means that consequences of actions cannot be commensurably evaluated.

Much more can be said about this approach to ethics, but a number of points should here be noted. The approach, though attractive in its focus on human flourishing, invites searching questions as to how we are to understand concepts of 'damaging,

destroying, or impeding' a basic human good, especially, for our purposes in this chapter, that of life.

We need to ask which acts count as 'direct' attacks and whether all such acts are truly immoral. For example, in the case of capital punishment actions that do seem to be 'direct' attacks on the good of life have been and are approved in certain circumstances by many, including the religious tradition out of which the Grisez-Finnis theory arises (even if that Church has increasingly frowned on the use of capital punishment in practice).¹⁵ Yet on the Grisez-Finnis account it is difficult to see how such actions could ever be morally justified. Similar problems crop up with regard to what are usually taken to be morally licit actions of armed police or soldiers in just wars: even where such people are not intending to kill aggressors, they are at least intending to do serious bodily harm.

Furthermore, how is one supposed to characterise actions that 'impede,' for example, the basic good of play, and why need such actions always be necessarily wrong?

Incommensurability

As well as providing answers to such questions, the theory needs to give a clear account of the practical implications of the 'incommensurability' of the basic goods. With regard to the contraception case, GBFM posit that, as there are no goods commensurable with the basic good of human life, one can never make a rational choice against life. It would only be rational to choose against the basic good of life for the sake of a greater good, but given the incommensurability of any other good with this (or any other) basic good, such a choice could never be indicated.

GBFM apply their theory of basic goods to contraceptive acts, to which they object on the ground that they are identifiable as

Contraception as Contralife

necessarily contralife choices—i.e. choices made directly against the basic good of life. As contraception is, according to GBFM, a contralife choice, it is, necessarily, irrational.

The fact that couples do try to calculate whether to bring about a child at some given time, and appear to compare that to the option of *not* bringing about a child at that time does not, according to GBFM, mean that their calculations are in fact rational. In comparing two possible futures, one in which a baby comes to be and one in which he/she does not, the couple appear to be calculating on the basis that they “*know* that the future without the baby will be rationally better,”¹⁶—and, say GBFM, this they cannot know.

However, this approach seems fraught with difficulties. Such high standards for knowledge claims threaten to call into question any knowledge claims based on future probabilities for medium-term decisions.¹⁷ All of us make, all the time, exactly these kinds of decisions, based on reasonable projections of future probabilities.

Consider also a couple that decide not to conceive a child in January but to conceive one in March instead. They do this for reasons of the mother’s health. Cannot the mother claim that, in choosing to have the baby later in the year, she is comparing one life against one life—and, all other things being equal, doing so for reasons of health? In which case, cannot she be said to be choosing the same amount of life (beginning two months later) plus the good of health? Given this, it certainly appears that the choice to try and conceive in March overrides the rational appeal of conceiving a child in January.

If GBFM refuse to concede the above, then it follows that the sorts of commensurating decisions that GBFM *do* allow as rational are not possible either. Why is it rational (*ceteris paribus*

and with no better options) to crash your aircraft into a field that is less densely populated than a neighbouring field? Such a decision is rational according to GBFM because the pilot's "comparison of possible futures established the rational preferability, in terms of saving human lives, of steering towards the less densely populated area."¹⁸ However, it is unclear how the loss of V's unique and irreplaceable life in field 1 is being compared to the instantiations of X, Y, and Z's lives in field 2. The value of X, Y and Z's lives in field 2 may *exceed* but does not *include* the value of V's life.¹⁹ Put another way, proposal (a) "to crash into field 2" does not have all the beneficial features of proposal (b) "to crash into field 1" *and some more*. Moreover, how is one supposed to identify the 'future benefits' of the pilot's decision, following GBFM's approach? Yet GBFM in this case wish to characterise the pilot's decision as rational. If that decision over apparently 'incommensurable' futures can be rational, then why cannot other such decisions?

In light of these examples we can ask regarding incommensurability: if a chooser is to be a virtuous chooser, i.e. one who aims to make those choices most fulfilling of human nature, then he must be choosing with an eye to greater or lesser value (which is not to say that value can be identified independently of what it is virtuous to prefer). And the virtuous chooser is precisely a chooser who is good at identifying just how valuable certain choices are. The same applies to GBFM's point about side-effects and the Golden Rule.²⁰ Here the morally praiseworthy application of the Golden Rule to situations requiring a calculation of the possible benefits/burdens of side-effects requires an agent to be virtuous—and a virtuous agent is precisely the agent who can identify correctly which instantiations of goods are most important.

An example might be the following: While playing dominoes I notice that a person in the same room is drowning in the bath. It

appears that I have a duty to save this person, and in so doing stop playing dominoes. I have this duty, according to the Grisez-Finnis school, not because life is a greater good than play (or because this instantiation of life is a greater good than this instantiation of play), but because, following the Golden Rule, I should do unto others as I would have them do unto me (on this see also George (1999)). However, the proper application of this rule assumes that I am not a domino-playing fanatic, who thinks that playing dominoes is so important a good that even if I were dying, I would urge others to carry on playing dominoes rather than save me. In order for the rule to be properly applied we implicitly assume a *virtuous* agent of the kind I have described. This is not to deny that the virtuous agent is bound by certain non-negotiable demands concerning particular virtues and their related goods. It is merely to note that the GBFM view of incommensurability seems far too strong to account for some actions that seem morally required.

The Contraceptive Act

Having briefly considered incommensurability and the theory of basic goods it is important now to be clear how GBFM define a contraceptive act. The authors state that:

...to contracept one must think that (1) some behaviour in which someone could engage is likely to cause a new life to begin, and (2) the bringing about of the beginning of new life might be impeded by some other behaviour one could perform. One's choice is to perform that other behaviour; one's relevant immediate intention (which may be sought for some further purpose) is that the prospective new life not begin.²¹

This definition shows that GBFM see contraception as only loosely related to intercourse: a sexual act and a contraceptive act

are, in their view, two separate acts. The definition contrasts with a definition which takes intentional contraceptive acts of sexual intercourse as the basis for a definition of contraception.²²

One of the reasons for setting up the debate this way is that, by focusing upon the intention of those who contracept, their chosen human act can be properly analysed in terms of intentionality. GBFM appear to define contraceptive acts in a way that captures what Pope Paul VI in *Humanae Vitae* #14 condemns, namely any act, “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.”

In order to stress what their definition of contraceptive acts includes, GBFM state that contraception is not defined by a pattern of outward behaviour. An example they give is of a population-controlling dictator who for his own purposes ‘contracepts’ by adding a fertility-reducing chemical to the public water supply. The dictator’s behaviour is, on GBFM’s account, contraceptive; that is, he makes a choice the moral object²³ of which is to impede the beginning of the life of possible persons. The moral object of the choice is what renders his behaviour contraceptive. Such behaviour, on this account, necessarily exhibits a contralife will. Couples who drink the water and subsequently have intercourse, insofar as they did not drink the water for contraceptive reasons, would not be contracepting, although their intercourse would be infertile.

Whether the dictator’s own actions should be brought under the term contraceptive is an interesting question. It does seem confusing to say, with Janet Smith,²⁴ that the dictator has turned the marital acts of the water-drinking victim couples into contracepted acts (albeit non-culpably contracepted acts)—unless contracepted acts merely means acts physically incapable of procreation (in

which case it might be better simply to speak of physically sterile acts). What the dictator cannot do is turn anyone else into a contraceptive by such means, for it is not in his gift to impinge upon the moral objects of the chosen behaviour of others by means of acts of which they are unaware. All he may do is render sexual acts physically infertile. However it seems that we *can* usefully say of the dictator example that not only parents but society needs to welcome (a) fertility and (b) new lives. On the assumption that contraceptive and other sterilizing acts are in some sense immoral, the dictator might *corrupt* married couples and destroy their marital acts at the subjective level (promoting contraception and not just secretly changing the water) *or* he might fail to respect the goods that couples' own actions *do* respect (i.e. a) and b)).

There appears to be a moral difference between a couple choosing to perform an act of contraceptive sex, and the dictator choosing to pollute the water hoping to sterilise others. A common argument against contraception, based on characterising contraception in terms of contraceptive sex acts, will say that the couple are intentionally doing something to their marital act which renders it non-marital and that this rendering differs radically from what the dictator is doing, as he is simply incapable of rendering anything non-marital without engaging the couple's own intentions.²⁵

An example to elucidate this seeming difference might be the following. Imagine a dictator who, in introducing his fertility-reducing drug into the water, somehow ensures that it will only affect the fertility of non-married couples. He does this because he thinks it is unjust for people to have children out of wedlock. He also believes it to be immoral for any couple to contracept their own acts of intercourse, because, according to him, in so doing the couple, married or not, render their acts opposed to the good of marriage.

Now imagine a non-married couple contracepting their sexual act with a similar motive to the dictator sterilising the water i.e. to avoid a child being born out of wedlock. The couple have turned one type of act (their act of merely non-marital intercourse) into another type of act entirely (a *contracepted* act of non-marital intercourse). The couple have not, of course, turned an otherwise marital into a non-marital act, but rather, have further distanced their non-marital act from a marital act as GBFM and the Catholic Church to which they belong would understand that act.²⁶ In so doing the couple have affected their characters differently from the way in which the dictator has affected his.

A common approach to the question of contraception would see the couple's act but not the dictator's as coming under the heading of specifically sexual immorality. Is the dictator being sexually immoral in some way? We might imagine a case where the dictator does not even know what marital meanings the sexual act is meant to express—he may merely have some hazy idea that normal sexual intercourse is loosely connected with the possibility of conception.

But if this is the case, is the dictator's wrongdoing to be characterised as merely a case of illicit use of power, such as illicitly sedating a couple would be? Is it only the illicit use of power over the couple that would characterise the wrongdoing of the dictator in a case where the dictator, with perhaps a relatively benign *further* intention, sought to prevent the couple's sexual act from being fertile? Or is his wrongdoing to be characterised more specifically as a species of sexual wrongdoing? It might be argued that the dictator does not relate properly to certain couples' reproductive well-being and in this sense behaves somewhat analogously to a couple who contracept their sexual act. However, there are very real differences too.

Contraception as Contralife

On the GBFM account, what makes both the couple and the dictator contraceptors is their possession of a contralife will. Any further difference in the moral nature of their acts is, for GBFM, extraneous to the question of whether they are engaging in the type of wrongdoing known as contracepting.

Such an account of contraception cannot properly exclude the following type of case. Imagine an aunt expressing to her niece disapproval of her niece's intention to have a child. The aunt foresees that some behaviour of her niece is likely to result in a new birth, and believes rightly or wrongly that her verbal expression of disapproval will make this eventuality less likely. Is she, on the GBFM definition, a contraceptor? If she is a contraceptor she is surely a worse one than the dictator, for she is directly attempting to influence the intentions of her niece and not merely whether or not she has a child.

Would it matter if her advice to her niece not to have a child were grounded in a recognition that the niece, for very good reasons, had a *duty* not to have a child? GBFM might try and argue that their use of the word "impede" in relation to new life rules out cases such as this, but they provide no definition of the word "impede" or any independent reason for thinking that such cases should be ruled out by their definition.²⁷ Lawrence Masek imagines a case where a father, fearing his daughter and son-in-law may not chart their fertility correctly (they have a serious reason to avoid pregnancy), adds an anovulant drug to his daughter's drink. The couple do chart correctly and the father's intervention is superfluous. For Masek, the father "does not commit an injustice by frustrating someone's desire to become pregnant. In this case defenders of *Humanae vitae* cannot circumvent the contralife will argument by appealing to the injustice of using contraception on others. (To

emphasize that the woman and her husband are not victims of an injustice, one could add that they would welcome her father's intervention if they knew about it)."²⁸ This argument, however, misses the point that an assault is still an assault even if the victim or victims would not object to it if they knew. And a virtue ethicist might say that such an assault is precisely against the virtue of justice. And surely something qualifies as an assault that involves a non-consensual thwarting of - or attempt to thwart - a function: in this case the non-trivial matter of a woman's fertility.

If it can be shown that GBFM's definition of contraception is in important ways inadequate in drawing a distinction between contraceptive acts and the practice of 'Natural Family Planning' (NFP), which GBFM follow the Catholic Church in seeing as licit in principle, there will be no reason to include the above cases under the term of contraception. For, if contraception has such a wide meaning, inclusive of many activities GBFM and the Catholic Church regard as licit, then clearly GBFM will no longer be merely defending the teaching of *Humanae Vitae*, but actually rejecting it as too lax.

One reason given by GBFM for treating contraceptive acts independently from sexual acts is that by doing so, "one cannot argue that since marital intercourse is good, contraception involved in it can be acceptable. If the contraceptive act and the marital act were one and the same human act, that argument might succeed, since that one act could be analysed with two effects."²⁹ This, GBFM believe, would make this approach open to the objection that the 'principle of double-effect' might justify such an act.

However, many of those who object to contraceptive sexual acts will deny that such acts are marital in nature, precisely because they have been deliberately rendered contraceptive.³⁰ Such an ac-

Contraception as Contralife

count, which I have called the contraceptive sex act account, allows that ‘taking a pill’ is an act of contraceptive intent (assuming that is why the pill is taken) and that ‘having sexual intercourse’ after taking the pill is acting with an intention that may well confirm the original intention (i.e. the intention to render infertile any possibly fertile sexual act). So, while there are two acts—the taking of the pill and the sexual act—the contraceptive sexual act is one that confirms the prior intention embodied in the pill-taking act.³¹

Necessarily Contralife

Given their wide definition of contraceptive acts, GBFM proceed to argue that “every contraceptive act is necessarily contralife.” A couple, according to them, “in choosing contraception as a means to [a] further good... necessarily reject a new life. They imagine that a new person will come to be if that is not prevented, they want that possible person not to be, and they effectively will that he or she never be. That will is a contralife will. Therefore, each and every contraceptive act is necessarily contralife.”³² As GBFM put it elsewhere, “the contraceptive acts seeks to impede *the beginning of the life of a possible person.*”³³

Obviously an account of the wrongness of contraception in line with Catholic teaching will need to exclude the actions/omissions of couples who licitly practice NFP, but we will come to that later. The central claim that GBFM make about the wrongness of contraceptive acts appears to be that a couple that choose such acts can be said to be choosing against the life of a new possible person. GBFM further state that “...in and of itself, a contraceptive act is nothing but contralife,”³⁴ that “insofar as contraception is contralife, it is similar to deliberate homicide,”³⁵ and that insofar as a will is contralife it embodies a “practical (though not necessarily emotional) hatred of the possible baby they project and reject, just as

the will to accept the coming to be of a baby is a practical love of that possible person.”³⁶

Possession of a contralife will presumably means at very least something formal, such as ‘having an attitude that does not appropriately value the good of life,’ or ‘having an attitude that relates to the good of life inappropriately.’ However, GBFM imply that a contralife will is something more than this. They state that, “an essential condition of the immorality of deliberate homicide is that it involves a contralife will,”³⁷ and further that, “contraception is similar to deliberate homicide, despite their important differences, precisely inasmuch as both involve a contralife *will*. . . the contralife will that contraception involves also is morally evil, although we do not claim that it is usually as evil as the homicidal will.”³⁸

However, a homicidal will is a will that aims at depriving an identifiable individual or individuals of the good of life, thereby harming him/her/them.³⁹ For GBFM the contralife will involved in contraception is a refusal to help to bestow the benefit of existence on a *possible* person, but I take it that this does not involve a ‘harm’ to any such person who will not in fact exist: there is a major difference between an action that harms by depriving a real future person, and an action that fails to benefit a possible person.⁴⁰ True, a choice of failing to benefit can be a wrongful harm in some circumstances where there will be a real future victim (and even where there will not be there may be a failure in generosity involved). However, what the distinction shows is that the term contralife operates in far too wide and formal a way to capture what is an “essential”⁴¹ condition of a homicidal will.

Indeed, there is a question as to whether it is correct to characterise the contralife will as an “essential” condition of a homicidal will if by that we mean a non-trivial condition. We might say that a

Contraception as Contralife

homicidal will is a will directed to the end that a particular person or actual future person or persons be (effectively) harmed by depriving them of life. But, if I will to kill X I am willing against X's life (even if I may not be willing to 'harm' X as such—I may not believe death will be harmful). There is no reason to suppose that there need be a separable 'contralife' component of the homicidal will which acts as a 'condition' for the homicidal will, except in the trivial sense that life is inappropriately related-to (at least if the killing is unjust). Similarly a theist might argue that an essential condition of any sin is that it involves a will opposed to God's law, such that insofar as one type of sin involves such a will, it has that in common with any other sin. Here what is constitutionally a sin need not be something *intended* to violate God's law as such, even if it is known that it will do so (the relationship between one's intentions and awareness of this kind is discussed further in the Appendix).

Admittedly GBFM's understanding of 'contralife' will is narrower than our imagined 'contra God's law' will; nevertheless, there are multifarious ways in which one might have what GBFM term a contralife will. The aunt in our earlier example may have a contralife will insofar as she takes verbal steps to discourage her niece from conceiving: if there is no moral reason why her niece should not conceive, then the aunt relates inappropriately to the good of potential new life. However, what of a couple who *do* have a duty not to have a child, but nonetheless will to conceive one? Surely their will must also be, in some sense, contralife, in that they relate inappropriately to the good of life by their very pursuit of that good (we might say, they value life but fail to respect it).

A couple, on the GBFM account, have a contralife will if they intend their extra-marital sex not to result in conception. According to GBFM, a couple who practise NFP with the intention that

no child come to be, and choose the not-coming-to-be of a child as a means to achieving their further goal of avoiding baby-related burdens, have a contralife will. A couple who refuse to bestow the good of life on a possible person, if such a formulation makes sense, and use contraceptive means to achieve this goal also have a contralife will.

These examples make it clear that there are many different ways of possessing a contralife will. They should also make clear that the attempt to draw a close analogy between a homicidal will and a merely contralife will is misconceived.

Possible Persons

A number of further objections can be made to the GBFM account. Firstly, the idea that a couple necessarily ‘imagine’ a possible person whom they make sure, by their actions, will not come to exist, does not seem to be justified. There is no reason to think that ‘contracepting’ couples necessarily have such thoughts.⁴² What are the identity conditions for such a possible person? Just how specific does the imagining of the possible person have to be, and does the specificity of the couples’ visualisation of the possible person they are choosing against affect the level of moral wrongness of the contralife choice made against that possible person?⁴³ As concerns the possible baby that results from contracepted sexual intercourse being unwanted/hated, GBFM would need to establish that this practical hatred is a necessary motivation for the couple to undertake a contraceptive act, not just that it is a likely later reaction to any actual baby that does in fact come to be.

In translating precise definitions into predicate logic we need a criterion of identity. As Frege argued, if we are to use the symbol *a* to signify an object, we must have a criterion for deciding

in all cases whether *b* is the same as *a*, even if it is not always in our power to apply the criterion.⁴⁴ Not only can we have no object without an identity; we can have no *naming* of an object without a *criterion* of identity. No such criterion for the ‘imagined’ or ‘fore-seen’ possible person is provided by GBFM. This is an important point, for the wrongness of contraception on the GBFM model runs along the lines that it is illicit to will against the good of life of so-and-so. However, the most one might will against in fact would be a range of possible persons one of whom will, in coming to exist, fall under the described range.

Can we make intelligible the notion of practical hatred for a person who does not yet exist? Imagine two families, the Pascals and the Molinas, who are involved in a long-running blood-feud. One day a member of the Pascal family, Rufus, poisons the well of the Molina family with the intention of killing the future yet-to-be-conceived grandchild of the Molina’s. Cannot Rufus be said to have, at least, a malicious intention towards the future Molina grandchild? In a sense this seems a reasonable assumption, but needs to be qualified. Surely the most Rufus can be said to have is a conditional general attitude to any possible future Molina grandchild. As a general intention this is condemnable but even here, Rufus cannot be said to have a practical hatred for a person who may never come into existence. Rufus’ intention cannot be characterised as “there exists *x*—I intend to make sure that *x* doesn’t exist,” precisely because *x* does *not* yet exist. Moreover, Rufus can only will against a range of possible persons. One may always ask the question, of someone who refers to “the future Molina grandchild,” “why do you suppose that there is only one (non-existent) future Molina grandchild?”⁴⁵ So the most that Rufus may have is a negative general propositional attitude towards a range of possible

persons.

The analogy with contraception breaks down, however, when we remember that the contracepting couple is acting precisely to ensure that the possible person is not actualised, whereas Rufus is doing nothing to prevent the coming-to-be of the future grandchild, and may even welcome his/her coming to be so that his evil plan can be realised. Whereas Rufus wills harm to one of a range of possible persons he anticipates will be actualised, the contracepting couple wills against a range of possible persons who they will never to be actualised. Rufus' will can here be called homicidal in a way in which the contracepting couple's can't be.

Admittedly, Grisez and Boyle⁴⁶ do not now use the word 'imagine', and talk of the couple necessarily 'foreseeing' a baby coming to be. This seems more hopeful insofar as it jettisons the idea of active imagination of a specific possible person and is more suggestive of the idea of a range. The theory, however, runs into its biggest difficulties with the NFP/contraception distinction.

GBFM appear to be making the counterfactual claim that if sperm X were to enter ovum Y at such-and-such a point, and at such-and-such a time, and at such-and-such a temperature etc., we would have a specifiable possible person. Given this, GBFM then seem to be saying that a contracepting couple must be necessarily foreseeing such a specifiable possible person, and acting so as to prevent his/her coming into being. Of the status of such a being GBFM say: "the possible person whose life is presented is no mere abstraction but an absolutely unique and unrepeatable individual who would exist if he or she were welcomed rather than prevented."⁴⁷ According to GBFM, such an intention to prevent is always wrong because it entails a contralife will. It entails a contralife will because a couple, in choosing to contracept, is doing no more and

Contraception as Contralife

no less than impeding the beginning of the life of that specifiable possible person (or, at least, a narrowly specifiable range of possible persons).

However, we need to ask here how the intentional relation to the specific possible person or persons involved in the case of the contracepting couple can differ from that involved with an NFP couple. The overarching choice in both these cases is “not to cause [or “not to help to cause”] the initiation of new life” as the result of a chosen sexual act. GBFM appear, in characterising contraceptive acts in terms of an intentional relation to the bringing into being of a possible person, to cast their net too widely. The argument is that both a contracepting couple and an NFP couple can have good reason not to cause the initiation of new life, due (for example) to the burdens that a baby’s coming-to-be would bring about. To contracept in order to achieve this goal is, for GBFM, never morally licit because contraception necessarily involves intentionally impeding the beginning of a possible person’s life. NFP, however, on the GBFM account, need not be contralife, although it *can* be chosen with “contraceptive intent.”⁴⁸

The distinction of importance for GBFM is the following. To contracept is to choose to prevent the beginning of the life of a possible person—it is “a choice *to do something*, with the intent that the baby not be, as a means to a further end.” However, the non-contraceptive choice of NFP⁴⁹ differs because “It is a choice *not to do something*—namely, not to engage in possibly fertile sexual intercourse—with the intent that the bad consequences of the baby’s coming to be will be avoided, and with the *acceptance as side effects* of both the baby’s not-coming-to-be and the bad consequences of his or her not-coming-to-be. In this choice and in the acceptance of its side-effects, there need be no contralife will. The baby

who might come into being need not be projected and rejected.”⁵⁰ The authors further add: “[T]rue, not choosing to realise that good—and, indeed, choosing to avoid the burdens one anticipates if one were to realise it—means *not willing* that the good be realised, but it does not mean *willing* that the good *not be realised*.”⁵¹ The claim is that the NFP couple can be, “choosing not to realise something they have good reason to choose to realise [a baby], but whose realisation would conflict with avoiding something else they have good reason to avoid [the burdensome side-effects of that baby’s coming-to-be].”⁵²

Against this, it can be objected that the contracepting couple and the NFP couple stand in the same intentional relation to the beginning of new life, at least in the sense that both couples intend that life not be conceived. The contracepting couple, like the NFP couple, may well characterise their decision to contracept as a decision to choose against the burdens that the coming-to-be of a new baby will bring about. GBFM say that this necessarily involves for the contracepting couple a contralife will because it necessarily involves the intention to impede the coming-to-be of a new child. The NFP couple are said to be willing only against the bad side-effects that the coming-to-be of a new baby will bring about. But how is one to make sense of the idea that one can try to avoid the effects of having a baby without trying to avoid having a baby? According to the NFP couple’s plan, their *means* of avoiding the effects of having a child is *that they not have a child*. One of the propositions a couple must go through en route to reaching the intended outcome of their plan (not having those burdensome baby side-effects linked with the baby’s coming-to-be⁵³) is the proposal: *not having a baby*.⁵⁴ The deliberate removal of the necessary causal precondition of avoiding the baby side-effects cannot be character-

ised as a mere side-effect of the couple's plan.⁵⁵

Masek's Defence

Lawrence Masek, in an ingenious defence of the GBFM thesis argues that a couple using NFP and desiring that human life not begin do not have to be intending the non-existence of human life either as an end or as a means. He proposes three examples to defend this claim:

Case 1: A baby has an illness that causes both earache and constipation. A pediatrician informs the baby's parents that the two symptoms cannot be treated simultaneously. The parents need to choose which symptom to treat first, but the pediatrician says that each symptom causes an equal level of discomfort and that there is no medical basis for choosing one over the other. The parents toss a coin to determine which symptom to treat first.

Case 2: The baby's situation in case 2 is the same as the baby's situation in case 1. The parents are about to toss a coin to determine which symptom to treat first. They then consider that they have a long car trip planned and that treating the earache first would make the car trip easier, since it would reduce the hassle of changing dirty diapers on the trip. The parents therefore choose to treat the earache first.

Case 3: Parents of a healthy baby are planning a car trip. They add a chemical to their baby's food in order to impede the baby's digestion, in order to

cause constipation, in order to reduce the hassle of changing dirty diapers on the trip.

Masek tell us, “I see no reason that the parents act wrongly in case 1. If they may toss a coin in case 1, I see no reason that they may not consider the effects of each option in case 2. In case 3, however, the parents do act immorally since they intentionally impede their baby’s health as a means to having fewer hassles on their trip.”

We can cautiously agree with Masek that these judgements “seem intuitively plausible.”⁵⁶

One does not need to reject the idea (strongly argued for by Frances Kamm⁵⁷) that an effect can motivate an action without being intended, in order to reject Masek’s arguments with regard to contraception and NFP. What we need is to examine the examples Masek gives, and others, in the light of questions about contraception.

It would seem that the difference between Case 2 and Case 3 is like the difference between (3) contraception (‘deliberate constipation’⁵⁸) and delaying sexual activity along NFP lines (2).

For Masek it is unreasonable to say that the couples in cases 1 and 2 ‘intend’ the baby to be constipated. For when you choose when a particular bad side effect happens (constipation), you need not be intending it.

However, this becomes more difficult to argue the more useful to you is the aspect that guides your choice (as opposed to e.g. situations where that useful aspect is a mere ‘defeater of a defeater’, as Kamm would call it). Let us imagine two cases involving fertility-affecting treatment, which is more directly related to contraception

than Masek's cases:

Case A: A woman needs treatment that will make her temporarily infertile (a bad side-effect of some morally good medical treatment). The infertility is unwelcome (or at least, not particularly focused-on): it is simply a bad side-effect. She will choose when to have the treatment and so will choose the time when she has that bad side-effect.

Case B: A woman doesn't want a baby and chooses the same treatment that the woman in Case A receives, but regards the 'side effect' as the doctors see it as a bonus. She generally objects to contraception (i.e. rendering otherwise fertile acts infertile), but wants infertile sex with her husband when he comes back from his lengthy naval posting. In this case she is *intending* to make herself infertile. This is not a mere side-effect. Her actions differ from those of the NFP couple who use infertile or fertile times for intercourse, because here the woman is *choosing to make a fertile time infertile*.

In light of these relevant examples what might be said about Masek's points? Certainly it can't be the case that you intend side-effects which are still altogether unwelcome but which you shift to a less bad time, e.g. I will shift agonising pain to Thursday rather than Wednesday. Surely it is ludicrous to say I am intending agonising pain as an effect of my operation!

However, when the 'side-effect' is welcomed and seen as conferring a benefit overall, it is a different story, e.g. when the secondary effect of infertility is brought about so as to 'benefit'

the woman at a time of her choosing. If you time the ‘side-effect’ to get the perceived benefit (as opposed to minimising perceived harm) then how can we say this effect is not intended?

In an NFP case similarly, there is certainly an intention that children not come to be. To claim that the NFP couple are merely not choosing to do anything to achieve something is to mischaracterize what they are doing. NFP can be adopted by a couple precisely because they intend that a new child not come to be on the grounds that the burdens this would bring about are serious enough for them to avoid having a child at that time. By deliberately refraining from intercourse when the woman is thought to be fertile, the couple intend precisely not to bring about a new child.⁵⁹ While the use of contraception actively prevents (or lessens) the possibility of a new child coming to be, the NFP couple in contrast are said to act licitly in avoiding by omission a new child coming to be. However, the NFP couple, insofar as they are pursuing that strategy, are not just omitting to actively bring about the coming-to-be of a new child, they are *intending by omission* that a new child not come to be.⁶⁰ This is precisely the rationale behind the adoption of NFP.⁶¹

The distinction, for GBFM, between the NFP couple and the contracepting couple in their intentional relation to the existence of new life is difficult to see. Certainly the authors when writing about euthanasia⁶² see as morally equivalent deliberate active euthanasia and euthanasia by deliberate omission (as opposed to ‘letting die’ without intending death). Is the idea then that the NFP couple must somehow try to intend only to avoid the burdens of the possible baby’s coming-to-be, without intending that baby’s not-coming-to-be? But as we have seen, the avoidance of the coming-to-be of the baby is integral to the plan of refraining from in-

tercourse. If we do accept the GBFM position here, then cannot the couple using a condom who also will to avoid the bad side-effects of pregnancy be said to be not necessarily willing against conception itself? If that is the case, then GBFM must characterise such couples as non-contraceptors, which is highly counterintuitive.⁶³

The only way to distinguish NFP and contraception, on the GBFM account, appears to be that with contraception the couple seem to be foreseeing and directly choosing against a relatively specific possible person. So, with a barrier contraceptive, the couple (assuming full knowledge of sexual reproduction) are said to be willing against any possible person that would result from any of the sperm that would have otherwise penetrated the woman's ovum. But even here there are, on average, over 40 million sperm per ejaculate that might fertilise the woman's ovum at any of the many possible times: as with the NFP couple, it may be claimed, their refraining from intercourse during a certain period cannot be said to be a direct willing against a clearly specifiable possible person, given that there is *no* clearly specifiable possible person.

However, if we accept this distinction, then surely we must accept that the couple using an ovulation-impeding contraceptive (e.g. the Pill) are also not directly willing against a clearly specifiable possible person (leaving aside abortifacient effects they may realise are possible and positively intend should there be 'break-through' ovulation). In point of fact, the couple who have sex after taking the pill are even more distanced from a specific possible person than the NFP couple. For the NFP couple are deliberately refraining from sexual activity due to the fact that they believe a particular ovum at a particular time will be present, whereas the pill-taking couple are having sex when they believe no ovum will be present at the time of sexual activity. So, the pill-taking couple,

insofar as they relate to possible persons, are further distanced from a specifiable possible person than the NFP couple—who stand in closer relation to the possible persons that would result from ovum x being fertilised, at time y, by one of over 40 million sperm. Again, the NFP couple are omitting to act at time y, but it is an intentional omission adopted on the grounds that they intend that none of a range of possible persons come to be. GBFM might have other grounds for rejecting pill-usage (such as that it temporarily suppresses healthy functioning), but that position would be independent of their contraception/contralife argument.

Moreover, the NFP couple, in refraining from intercourse at a certain time, with the intention that a new baby not come to be, could be said to be choosing that a specifiable possible person (i.e. the person that would have resulted if they had chosen to have sexual intercourse instead of refraining) not-come-to-be. The NFP couple intentionally omit to have intercourse because they seek to avoid any such intercourse causing the beginning of a new person's life.

If the claim were that the difference between the NFP couple and the contracepting couple is that these couples have a different intentional relation to the sexual activity and its being a possible cause of new life (the NFP couple has an intentional relation to *abstain* from sexual activity—something GBFM themselves note), then we have a rather different argument from the one proposed by GBFM which is concerned too broadly with the intentional relation to the “beginning of new life.”⁶⁴

Rape Case

On the GBFM account, then, there appear to be no cogent grounds for excluding the licit practice of NFP from the category of contraception. On top of this GBFM also have difficulties with

the case of pregnancy prevention after rape. The latter is generally accepted by Catholic commentators on these issues, and various Bishops' Conferences or their Committees have said that a woman who has recently been raped is quite within her rights to seek to evacuate the rapist's sperm from her body.⁶⁵ GBFM have this to say on such an action: "...the measures that are taken in this case are a defence of the woman's ovum (insofar as it is a part of her person), against the rapist's sperm (insofar as they are parts of his person)."⁶⁶ The question here is whether a woman in this situation is, according to GBFM, morally permitted to prevent the conception of a specific possible person.

Imagine a woman who either knows or does not know that she is fertile. She is much more likely to try and rid herself of the rapist's sperm if she believes that by not doing so she risks the conception of a possible person. But if that is the case, then she very definitely is willing against a possible person. She foresees the possible person coming-to-be (sperm X, Y, Z etc. entering her ovum), and she acts in such a way that that possible person does not come to be. Such action, on GBFM's account, exhibits a contralife will. Likewise, if I were to see eminent and wealthy fertility expert, Dr W. Inston, at one of London's glamorous IVF clinics, about to inject a single sperm into an ovum in a petri dish, and I grabbed his arm to prevent the procedure, would I be exhibiting a contralife will? I certainly can envisage the IVF (or rather ICSI – intracytoplasmic sperm injection) created baby – I foresee his/her coming to be, and I will against it. More realistically and less dramatically, we can imagine a couple who have agreed to try IVF, but, at the eleventh hour, decide that it is wrong to produce a child in such a way. Do this couple exhibit a contralife will in grabbing the doctor's arm to stop conception going forward?

One of the authors of the paper, Germain Grisez, has written further on this subject and suggested that conception should be understood as the completion or continuation of sexual union, and that the victim of the rape is justified in resisting the continuation of that union.⁶⁷ Such a position implies, however, that a rape victim who does *not* attempt to have the rapist's sperm removed from her may be consenting to (or at least not resisting) the completion of that sexual union even though she is now in a safe environment. So the rape victim is not only justified in having the sperm removed, but would appear on this view to have a *duty* to have it removed (insofar as this is practicable).⁶⁸ However, Grisez does not state this implication, making only the weaker claim that a woman in this situation can be justified in having the sperm removed.

It is difficult to make sense of Grisez's attempted solution to the problem of rape victims and contraception. He makes the claim that "...women who are victims (or potential victims) of rape and those trying to help them are morally justified in trying to prevent conception *insofar* as it is the fullness of sexual union" (emphasis added).⁶⁹ If conception simply *means* the completion of sexual union then we appear to have a simple identity statement, such that, insofar as a couple knows that conception is the fullness of sexual union, in willing against the fullness of sexual union they are necessarily willing against conception (i.e. the coming to be of a new human being). If the fertilisation process includes conception we also appear to have a problem of symmetry. For, if a woman may licitly will against the fertilisation process *qua* the end of the process (conception), then cannot a contracepting couple will against conception *qua* the beginning of a (gestational) process and as a means to their end of avoiding pregnancy burdens?

However, what Grisez *can* say is that there are two separable events here—1) the fertilisation process, and 2) the moment of con-

ception; and that the second event is related to the first as an effect is related to a cause. Up to the moment of conception then, we have a part of the man (sperm) engaged in the fertilisation process. The fullness of sexual union is therefore achieved just prior to conception, and conception is an effect of that union. At the moment of conception, the part of the man (sperm) breaks up and the sexual union ceases. On Grisez's account, the rape victim can licitly will against the completion of sexual union *qua* sexual union, and not at the same time necessarily be willing against conception.⁷⁰

Whether this is psychologically plausible (assuming accurate knowledge on the part of the woman as to what constitutes fertilisation and conception) is extremely doubtful. Nevertheless, even if we were to accept this account, there are further problems. Imagine a couple who plan to have sexual intercourse and then stop midway so that they do not begin a fertilisation process. On this account, the couple might be able to say that they had no intention against conception (they might even welcome conception), but that, for whatever reason, they were willing against the fertilisation process only. Perhaps such a couple could be criticised by Grisez for intending incomplete sexual acts—but this would be to criticise them on grounds other than that they are contraceptors. If one were to say that this example is hugely psychologically implausible, then one undermines the plausibility of the rape victim case also.

Conclusion

Given the inadequacies of the GBFM thesis in accounting for the distinction between contraception and NFP, and the permissibility of pregnancy prevention in cases of rape, it would appear that a different approach is needed in defining, and putting a case against, contraception. By attempting to provide an account of contraception that is not reliant on a prior theory of marital goods,

or presuppositions about the inherent values and meaning of the sexual act, GBFM have to adopt an externalist account as to the wrongness of separating the unitive and procreative meanings of the sexual act.⁷¹ They do account for the ‘inseparability thesis’, but only by pointing to what they take to be the wrongness of on the one hand, contraception, and on the other, IVF/AIH (artificial insemination by husband). Contraception, they claim, is always wrong, and for the reasons their paper has summarised. But, as I contend, their account is inadequate as it stands. Moreover, what the failure of GBFM’s account suggests is that it is difficult to give an account of the wrongness of contraception that is entirely separable from an account of the inherent goodness of the marital act—an inherent goodness that contraception is said to pervert. If we cannot understand the wrongness of contraception without a prior understanding of the value of the marital act, then this suggests that the whole GBFM project has started off on the wrong track (or that the wrongness of contraception and IVF is illusory). With IVF also, is it so evident that we can understand the alleged wrongness of IVF without also having some notion of how children should in fact be conceived—i.e. by a marital act? While it is *prima facie* wrong to make a human being a product of technological manufacture, it might be difficult to account for the repugnance felt toward this procedure without some prior understanding of how children ought to be brought about—i.e. by marital union.

The GBFM account attempts to explain what they see as the wrongness of contraception as applied to both marital and non-marital acts. However, it may be possible to account for this perceived wrongness by giving a *prior* account of how marital acts instantiate marital goods, and by demonstrating that sexual acts outside marriage which are contracepted are somehow further dis-

Contraception as Contralife

tanced from marital goods than non-contracepted sexual acts outside of marriage.

An account of the kinds of acts that constitute chaste acts – acts of full committed union and, perhaps, responsible parenthood – might be the account we are looking for. Such an account need not deny that contraception insufficiently respects the life-giving nature of acts of sexual intercourse (i.e. their teleology and meaning), and is, in this sense, contralife. On the contrary, it may give us a better idea of just *how* such contracepted acts are contralife (i.e. fail to respond appropriately to the value of life/fertility), and in a way free from the difficulties into which the GBFM account falls.

Notes

Chapter 1: pp. 34-65

¹ Cited in Grisez, Boyle, Finnis, and May (1988), 366. The quote has appended to it the following footnote (2): ““*Decret. Greg IX*, lib. V, tit. 12, cap. v; *Corpus iuris canonici*, ed. AL Richter and A. Freidberg (Leipzig: Tauchnitz, 1881), 2, 794: “Si aliquis causa explendae libidinis vel odii meditatione homini aut mulieri aliquid fecerit, vel ad potandum dederit, ut non possit generare, aut concipere, vel nasci soboles, ut homicida teneatur.” Some translate “causa explendae libidinis,” which is broad

enough to cover all motivation by sexual impulse, “to satisfy lust,” which unnecessarily limits the motive to habitual vice.”

Such texts are philosophically interesting, although it is worth recalling here that this book is a work of philosophy and does not rely on the authority of religious texts/teachings for its conclusions.

² Reprinted in Ford, Grisez, Boyle, Finnis and May (1988), 35-116.

All further references to this text in this book (referred to henceforth as GBFM (1988)) will be to this source. This paper has subsequently been further defended/amended by Grisez (1993), 506-516 and by Grisez and Boyle (1998), 228-232.

³ For more on the arguments focusing on contraception’s contralife character within the Church’s tradition see Noonan (1986) and the relevant references in GBFM (1988) 37 fn.2 & 38 fn.3.

⁴ Grisez (1993), 513 fn. 104 states: “An argument against contraception grounded in its opposition to the good of life can be articulated without articulating the general theory of basic goods and modes of responsibility”; he refers to the *Thomist* article (reprinted in GBFM (1988)) as such an argument. However, to make sense of the idea of willing against the good of life does require some kind of foundational ethical theory and it is unclear which account GBFM can be appealing to other than the basic goods theory. Moreover, the appeal GBFM make to the incommensurability of future goods apparently assumes such a theory (see GBFM (1988) p.52 footnotes 8 & 9).

⁵ In addition to the contralife argument, other writings of John Finnis in particular have developed theories on sexual ethics involving marital goods which could be applied to contraception – see Finnis (1997). In this paper Finnis refers to the good of marriage as “one of the basic human goods to which human choice and action are directed by the first principles of practical reason” p.97. See also Grisez (1993), 567.

⁶ I refer here specifically to John Finnis, Germain Grisez and Joseph Boyle, who have developed their theory in a number of works including: Grisez (1983), Grisez (1993), Finnis (1980), Finnis (1983), Grisez and Boyle (1979), Grisez, Boyle, Finnis (1988).

⁷ *Summa Theologica*, I-II, q.94, a.2.

⁸ Grisez (1983), 121.

⁹ Finnis (1991), 42.

¹⁰ Chappell (2005), 29.

¹¹ Finnis (1980), ch.4.

¹² Finnis (1980), 100-133 where Finnis adumbrates 9 basic requirements. Grisez generally refers to these requirements as ‘Modes of Responsibility’.

¹³ Finnis (1980), 101-102.

¹⁴ Finnis (1980), 120-121. For more on respecting basic goods see Finnis (1983) 124-127.

¹⁵ See for example *Catechism of the Catholic Church* (1994), #2266. For criticism of Finnis’s understanding of how to respect the basic good of life see Lamont (2002).

¹⁶ GBFM (1988), 54. Of course, couples may have other motives for contracepting or abstaining from potentially fertile intercourse, such as that they feel too fragile psychologically to conceive now, and recoil from the psychological burden without assuming that a possible future with a child would be a ‘worse’ possible future. In such cases the decision need not involve the kind of comparison of long-term futures that GBFM envisage. Moreover, a couple deciding to delay for two months bringing a new child into the world, so as to avoid the woman being heavily pregnant during a predictably hot summer, may be making their decision not on the basis of two long-term unknowable futures, but rather on the basis of a short-term concern. They may not focus at all on comparing the long-term futures, or they may assume that the good of the lives of the two possible children would cancel each other out so that only short-term considerations are relevant.

¹⁷ GBFM (1988) appear to adopt two lines of argument. One concerns the incommensurability of basic goods such that commensurating calculation between them is practically impossible. The choice to contracept is, on their grounds, contralife and therefore contrary to a reason (not directly

to will against the good of life) that cannot be rationally outweighed. The other line of argument concerns our lack of knowledge of the future, even when any commensuration might be done in terms of just one basic good.

Consider a case where a couple make a decision about when to conceive with reference only to the good of life. A couple that choose, via contraception, not to bring about a child at t_1 might be taking into account all sorts of reasons not to bring about a child at this time. Those reasons might well relate to ‘respecting’ the good of life, in that bringing about a child at t_1 , although instantiating life, is not thought to be an act sufficiently respectful of life (due to, for example, the inappropriateness of the situation for receiving a child). Contraception may indeed be an inappropriate way by which to avoid bringing a child into the world, but this argument about commensuration does nothing to prove this. What would need to be established would be the ‘contralife’ character of contraceptive acts as distinct from the practice of abstinence.

A further question is whether GBFM are committed to the view that, *ceteris paribus*, if a couple were to have a choice between conceiving twins or a single child, they should aim at conceiving two, for example if they are receiving fertility enhancement. Presumably they would have to answer yes, particularly given their position regarding the pilot example (see main text below). But surely in this case, the couple cannot know, at least on the GBFM view, that two is better than one as concerns the long-term future – in which case why would it be necessarily better to choose two?

¹⁸ GBFM (1988), 55. GBFM might reply that three lives as opposed to one life is the kind comparison that *can* rationally be made. However, imagine if you knew that the three people in field 2 all had one second to live, regardless of whether you crashed the plane into them or not – whereas the one person in field 1 had many years to live. Would this not affect what the pilot should do? If so, we are implicitly acknowledging that numbers are relevant only other things being equal (such as potential victims having equal expectations of future life). And if this is the case, then cannot a couple, in delaying conception for two months for, say,

the health of the mother, be recognising that by doing this they achieve life + health with conception in month 3, which outweighs life + lack of health with conception in month 1? If the pilot's decision cannot be rationally faulted on grounds of incommensurability, then neither can the contracepting couple's (of course, this is not to deny that the choice to delay conception via contraception may be irrational/immoral for other reasons).

¹⁹ GBFM (1988), 56 offer another example of the conditions required for rational decision-making. Here a house-hunter is deliberating between two houses, one of which has all the value-and-more of another, in terms of price, size and proximity to the school (the exclusive criteria for choosing in this example). The house with all the value-and-more than the other, say GBFM, provides one with an unchallenged reason to buy it. However, this immediately suggests another example where house (a) which far outweighs house (b) in terms of two of the set criteria but underweighs it a tiny bit in the remaining one criterion (e.g. size) cannot be 'rationally' chosen over the other house (assuming that there is no priority amongst the three criteria). If house (a) is chosen over house (b) here, the size (i.e. specific spatial area) of the house rejected is 'lost', but it might be argued that this is not a very important loss, and does not change the outcome of commensuration. To anyone who objects that the fact of a particular choice means that one is, in this case, commensurating by rating the criteria in some way the question remains why, at the general level, commensuration should be thought to be impossible. Moreover it is unclear whether GBFM think that one can commensurate even at the level of particular instantiations of goods.

In the pilot example the loss of V's life clearly is, at least, an important loss. But what reason is there to dismiss the idea that the choice of house (a) over house (b) is simply more rationally fulfilling of the chooser in that almost nothing will be lost in comparison with what is gained?

²⁰ GBFM (1988), 57-58.

²¹ GBFM (1988), 42.

²² See Smith (1992), 340-370 and Anscombe (1972).

²³ For a representative statement as to what the Grisez-Finnis school takes to be the defining feature of an action see Grisez (1983), 233. For a more recent account of what constitutes the moral object of an act see Finnis, Grisez, and Boyle (2001).

²⁴ Smith (1992), 360-361.

²⁵ I do not here propose to give a full exposition of the ‘contraceptive sex act’ or an account of how sexual acts ought to relate to marital goods; these are subjects for later chapters. GBFM recognise this different approach to the question of contraception, which they see as compatible with the contralife approach, observing that “recent Church teaching focuses almost entirely on contraception’s wrongness in relation to other values, especially chastity, marital love, and the sacred character of virtuous sexual activity in marriage.” GBFM (1988), 38.

²⁶ The Catholic Church holds that use of contraception prevents sex in marriage from being what it holds it should be: an act of *marital intercourse*: complete bodily and personal self-giving. For the same reason, it holds that sex between unmarried people falls short of what it should be (again: marital intercourse) on yet another ground, hence “further distanced.”

Self-giving, the giving of a gift, would also be violated by a couple who after sex used a spermicide out of fear of pregnancy. Perhaps rather similarly, for the Catholic Church, attempting to cancel your marriage vows doesn’t nullify those vows but does radically disrespect them. The effects of those vows continue over time and are open-ended and have implications for the couple’s life.

Sex and contraception are ‘separable’ as they are in any case of non-barrier contraception (a person forgets they took the pill or had an implant 3 months ago). Nevertheless, for the Catholic Church the distortion of self-giving is clear if we see the giving as being potentially prolonged in effect over a period of time even if the nature of the gift may not be fully known.

²⁷ It is unclear what the term ‘impede’ is meant to encompass in GBFM’s paper. If they mean by ‘impede’ any action undertaken with the intention

of preventing the completion of a causal process which could otherwise lead to the creation of a new life, an argument needs to be made as to why the impeding of such a causal process is always wrong. Such an argument would, presumably, have to take into account the significance of the teleology of sexual activity (see later chapters in this book) and of any objective meanings such activity embodied, as well as explore why it might be morally wrong to have a dual intention of performing and thwarting an act that could give rise to the causal process leading to conception.

Suffice it to say here that I do not believe GBFM have given any satisfactory account of why 'impeding' is wrong in this context, nor have they sufficiently defined what they mean by 'impede' so as to rule out those actions which they would accept as morally licit. Is the thought that there is some general principle of the type: It is always impermissible to impede a process that is under way that might lead to a good, because to choose to do something to stop that process involves willing that that good not be?

This cannot be a general principle. For example do I have a duty not to impede the recovery from illness of someone who is a threat to the common good? Do I have a general duty not to impede someone about to make a true but dangerous communication to a third party? It seems clear that these are not moral duties even though my choice that someone not recover now or learn something now is surely against the good of health and knowledge respectively.

By using the term 'impede' GBFM are indicating that there is more to their contralife argument than mere 'willing against life'. Given that some 'impeding' of processes under way that might lead to a good appears to be morally justifiable, the term is used in too wide a sense.

None of this is to deny that 'impeding' can indeed be morally significant and even morally conclusive in view of what is being 'impeded' and how, in the context of chosen sexual activity. But if 'impeding' must take a particular form in this particular area to be morally conclusive, then we are dealing with a substantively different issue from the mere possession of a contralife will.

²⁸ Masek (2011).

²⁹ GBFM (1988), 44.

³⁰ Finnis (1993), 189 states: "...contracepted intercourse has, objectively, the masturbatory feature that it simulates an aspect of the conjugal good that has in fact and in intention been excluded from it by an act which affects the reality of sexual activity (*qua* chosen) itself."

³¹ A woman taking a pill and subsequently repenting of, or at least regretting, her decision, who proceeds to have intercourse which has been rendered sterile by the pill she took, is not, in having that intercourse, confirming the intention embodied in the former pill-taking act. It is a more complex question whether a woman who takes a pill and is later completely indifferent as to whether her intercourse is rendered infertile by the pill is having intentionally contraceptive sex. It is worth noting that a woman could take a pill *in case* she chooses to have intercourse (which she is hoping to resist as immoral or unwise), not with the *intention* to have intercourse. See the discussion in Chapter 4 of conditional intentions.

³² GBFM (1988), 43. This statement has since been amended by Grisez and Boyle (1998), 231 to "contraceptors necessarily foresee that a baby might come to be, they want that foreseen baby not to come to be, and they choose to do something in order to make it less likely that he or she will come to be."

³³ GBFM (1988), 36.

³⁴ GBFM (1988), 43.

³⁵ GBFM (1988), 44.

³⁶ GBFM (1988), 46. It is not clear whether the 'practical love' of a possible person is even possible. Even God surely doesn't create out of love as opposed to creating a real person though a willingness to share love with him/her.

³⁷ GBFM (1988), 45.

³⁸ GBFM (1988), 46-47.

³⁹ The moral object of such a will – the deprivation of life – is what defines the nature of such a will.

⁴⁰ On this point see also Bayles (1976), 298-299. It should be clear that ‘harm’ and ‘benefit’ are not being used in their ordinary senses when relating to non-existent possible persons. A couple may bring about future benefits, including the benefit of existence, but cannot be said to be benefiting pre-existing persons. Possible persons may be specifiable only in the sense of exactly the person who *is* conceived as it happens.

⁴¹ By “essential” condition I presume GBFM mean something at least as strong as “necessary” condition.

⁴² Defining contraceptive acts in terms of a will that is necessarily contralife would also have the result that a couple using a condom to prevent the transmission of an infection was not contracepting in any sense. I think that GBFM are correct not to characterise such activity as necessarily contraceptive as opposed to wrong for non-contraceptive reasons.

However, the GBFM account of the wrongness of contraception would appear to make the following case, suggested to me by Edward Feser, wrong and for contraceptive reasons: Suppose someone creates a drug which guarantees that every act of sexual intercourse will result in pregnancy, and indeed will result in twins, triplets, or quadruplets. Now suppose he tells me that he has put it into the water I just drank and that unless I vomit it up within five minutes it will take permanent effect. Do I act immorally if I induce vomiting, and if I induce it precisely because I don’t want 50 or 100 children? Would this mean I have a ‘contralife will’ or ‘hate’ these babies? On the GBFM account the answer would appear to be ‘yes’. This example at least shows that the answer requires much thought before ‘yes’ could be accepted as reasonable (one might ask, though, of Feser whether in a case of ovarian hyperstimulation someone could destroy excess ova for avoidance of multiple conceptions and not be said to be contracepting).

An example of activity that many would consider contraceptive but would not be deemed so on the GBFM model would be the following (again from Feser): Suppose someone develops a drug/device which en-

sure that after conception takes place, the fertilized ovum (zygote) is put into suspended animation for a year, or five years, or whatever, within the woman's body, and that after this period the pregnancy will resume as normal. And suppose further either (a) that after this happens the woman cannot get pregnant again until the existing child is born, or (b) that other children may be conceived, but they will go into suspended animation too so that a 'backlog' is built up and the woman will give birth to multiple children later on.

Now, in either case – and whatever moral differences there are between (a) and (b) – we can imagine that people might use this device precisely to enjoy sex as long as possible without children. But they are not (especially in case (b)) acting with a 'contralife will,' at least if we imagine that they are perfectly willing to have the child(ren) when the time comes.

Such an action does seem to have many of the earmarks of contraception many people find objectionable. If GBFM's account of what contraception consists in is lacking (see the discussion of NFP in this chapter), then we need to find an independent way of judging the morality of such acts, as opposed to the type of acts GBFM are concerned with. Whatever one thinks of Feser's example (and one might object that a couple *could* reasonably delay childbirth in this way for serious reasons, not involving contraception or a 'contraceptive mentality' but relating to the mother's or children's health), the example does raise questions for the GBFM approach.

⁴³ Moore (1992) held that it is difficult even to make sense of the notion of a specific possible person, not least because only actual human persons are truly individuated. As he puts it, "babies not yet conceived are not particulars." p.167. See also Bayles (1976), 298-300. But this is too radical a claim, for we can certainly make sense of a proposition that conditions a, b, c (etc.) for conception z were such that only specifiable person X, and no-one else, could have resulted. As Hare (1975), 220 put it, such a potential person is "identifiable in the sense that identifying reference can be made to him," although clearly he is not identifiable with some already existing person. On a Kripkean model a possible particu-

lar must be individuated by some connection with the real world - and on Kripke's scientific essentialist view, this would involve identifying the gametes which 'would have' combined. We can make sense of that proposition (assuming determinism at the relevant ontological level - i.e. only one sperm could have 'won'). However, we'd need to know the intimate details of the course of the sexual act in question (body positions etc) - and it would have to be a possible alternative course in which contraception was not used. But, arguably (depending on one's view of so-called externalist theories of meaning) even having a theoretical criterion for identifying the possible person doesn't help much *if* we are talking about the couple having a pre-existing identifying reference to that person which is accessible to their minds. For the best they are likely to be able to manage is 'the person that could result from this sexual act' - which is not a unique description of possible persons - certainly not from their epistemic position, anyway. For an argument about how we can harm future people see Carter (2001).

⁴⁴ We do not have to accept Frege's description theory of reference. Even on Saul Kripke's New Theory of Reference, there would appear to be an analogous problem with possible persons.

⁴⁵ GBFM (1988) refer to the couple not wanting "*that* possible baby to begin to live" p.46 emphasis added.

⁴⁶ I know from personal communication that Finnis agrees with this revision. I am unaware of the position May has taken with regard to the revision.

⁴⁷ GBFM (1988), 66.

⁴⁸ GBFM (1988), 81.

⁴⁹ Grisez and Boyle (1998), 232 now deny that a couple could carry out a contraceptive choice via NFP. As they put it, "The choice to practice natural family planning is a choice to abstain from acts in which a baby would become a real possibility; the choice to contracept, presupposing the intention to engage in such acts, is a choice to try to prevent the baby who might result from them."

⁵⁰ GBFM (1988), 84-85.

⁵¹ Ibid.

⁵² GBFM (1988), 86.

⁵³ Obviously some baby side-effects might be avoided by other means, such as employing an army of nannies. But here we are only interested in the couple's plan to avoid baby side-effects by preventing the baby's coming-to-be.

⁵⁴ GBFM might make the claim that the baby's not-coming-to-be is to function as a *causal* means to the end of avoiding baby burdens, but is not a means *chosen* by the couple. But, insofar as a couple know that the causal means functions in this way, it is likely they are choosing this very causal path as part of their plan to achieve their end.

It is of course quite possible to choose an end *y* without knowing that means *x* is a necessary causal precondition of end *y*. In such cases there is present a false belief that an imagined particular pathway is all that is necessary to bring about *y*. But such is not the case with the NFP couple, whose plan for end *y* includes a plan of chosen means *x*, insofar as the couple is aware of this causal relation. The incoherence of any other position on their part is logical and not merely psychologically improbable in adoption (Vacek (1998), 62-63 appears to believe it is only psychologically improbable).

⁵⁵ Compare GBFM's argument to GBF's statement : "an action is intentional if it is part of the plan on which one freely acts. That is to say, what one tries to bring about, whether it be the goal one seeks to realise or the means one chooses to realise that goal, is intended." p.79.

⁵⁶ Masek (2011), 93.

⁵⁷ Kamm (2007).

⁵⁸ I take it that bringing about deliberate constipation, while in this case morally wrong as unfair on the baby, does not fall under any absolute prohibition of the kind that applies to contraceptive use in the view of Masek and the Catholic Church.

⁵⁹ Not merely "do not intend to."

⁶⁰ *Humanae Vitae* (16), to which GBFM are committed, states, with regard to a contracepting couple and a couple practising NFP: “In reality, these two cases are completely different. In the former married couples rightly use a faculty provided them by nature. In the latter they obstruct the natural development of the generative process. It cannot be denied that in each case married couples, for acceptable reasons, *are both perfectly clear in their intention to avoid children and mean to make sure that none will be born.*” (my emphasis). A couple charting their fertility are ‘avoiding’ rather than ‘preventing’ children coming to be. A couple don’t chart in order to have knowledge regarding the promotion of other goods. They promote other goods via the non-conception of a new child. Here abstaining is something the couple ‘do’ (just as they might choose to be silent).

⁶¹ Patrick Lee has suggested to me in correspondence that the claim that a couple are intending by omission that a new child not come to be is groundless, and that a couple making a choice to use NFP is analogous to a man choosing not to write a book because of the burdens involved in undertaking such a task. However, the analogy is not exact. The proper analogy with the NFP case would be a man choosing not to write a book because of the burdens that would come about *if the book were produced* (e.g. getting into trouble with the government). In this case the man *does* choose specifically against the proposed book in the same way that the NFP couple choose against the proposed baby.

⁶² See for example Grisez and Boyle (1979); Finnis (1995).

⁶³ See endnote 55 above for GBF’s statement on what counts as an intentional action, which is consistent with their views expressed in later work.

⁶⁴ Rhonheimer (1989).

⁶⁵ Joint Committee on Bioethical Issues of Bishops’ Conferences of Scotland, Ireland, England and Wales (1986); Joint Committee on Bioethical Issues of the Bishops’ Conference of Great Britain and Ireland (1986); Pennsylvania Catholic Conference, “Guidelines for Catholic Hospitals Treating Victims of Sexual Assault” (1993). It remains an open

question in Catholic moral theology whether such evacuation of sperm is morally permissible (though almost all writers would accept this), as well as whether other methods such as suppression of ovulation may be used. The feasibility of suppressing ovulation without unduly risking the life of any newly conceived human is a subject of intense debate.

⁶⁶ GBFM (1988), 69.

⁶⁷ Grisez (1993), 512. May (2000), 140-142 observes that: "...the moral object specifying the rape victim's (or potential rape victim's) human act is *not* to prevent the conception of a new human person but rather to prevent ultimate completion of an unjust act of sexual violence." He later states, with regard to acts undertaken to prevent the rapist's sperm from making his victim pregnant: "Such acts are not acts of contraception because the *object* freely chosen and morally specifying them is *not* the impeding of a new human life that could begin through a freely chosen genital act (=definition of contraception) but is rather the *protecting of the raped woman from further violence by the rapist.*"

⁶⁸ It might be argued that a rape victim *does* have a *prima facie* duty to remove the rapist's sperm from her body prior to any possible conception on the grounds that the sexual act has not been freely chosen and this an inappropriate way for a child to be brought into the world. This argument would depend on an idea of parental duty to the future child, and would not apply in a case where the woman knew that the act was in any case infertile. It seems that Grisez would have to accept, if the presence of sperm is truly seen as part of the act even after its apparent completion, that a woman has a duty to have the sperm removed as soon as feasible *even if she knows the act is already infertile*. This seems particularly unreasonable.

⁶⁹ Grisez (1993), 512. See also Grisez (1997), 251-255.

⁷⁰ In GBFM (1988), 36 it is stated that the distinction between seeking to prevent conception and seeking to impede the beginning of the life of a possible person is a merely conceptual distinction.

⁷¹ GBFM (1988), 97: "Since contraception is always wrong and since producing babies is always wrong, the only morally acceptable way to

engage either in lovemaking or life giving is by engaging in sexual intercourse that is open to new life.”

