

# Ethical Sex



# Ethical Sex

## Sexual Choices and their Nature and Meaning

Anthony McCarthy



Fidelity Press

South Bend, IN

2016

Published by *Fidelity Press* in South Bend, Indiana  
www.culturewars.com

Copyright © 2016 by Anthony McCarthy  
First Edition

All rights reserved. No part of this book may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of Fidelity Press.

Printed and bound in the United States of America  
by St. Martin de Porres Dominican Community

Cataloguing in Publication Data is on file with the Library of Congress

Anthony McCarthy  
Ethical Sex: Sexual Choices and their Nature and Meaning  
p. cm.  
Includes bibliographical references and index  
ISBN 0-9289891-17-0

# 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 4

## Marital Willing

*Set me as a seal upon your heart,  
As a seal upon your arm;  
For love is strong as death,  
Passion fierce as the grave.*

Song of Solomon

*Corrupt nature. Man does not act according to the reason which constitutes his being.*

Pascal, *Pensées*

### **Conditional and Preparatory Intentions and the Good of Marriage**

The *telos* of sex can be obstructed both in terms of the destruction of the social institution needed for people to flourish in this area and in the individual's pursuit of ends contrary to the *telos* which makes sex a rational and morally good activity. John Finnis, who has sought to give a philosophical justification for Catholic moral teaching on the basis of 'New Natural Law Theory' (see Chapters 1 and 2), aims to find a precise way of accounting for how it is that certain sex acts/intentions are 'against the good of marriage' and therefore irrational. His interesting argument rightly goes beyond references to what I have described as a generalised societal dilution of marriage and even beyond externally-visible sexual choices; for some of its conclusions, it also makes use of the notions of 'conditional' and 'preparatory' intentions.<sup>1</sup>

Finnis's account locates all sexual immorality as in some way involving offences against the good of marriage.<sup>2</sup> In a general paper, "Conditional Intentions and Preparatory Intentions," Finnis distinguishes, as he does in a later paper on sexual morality, between *conditional* intentions, in which the intention itself contains a qualifying condition ("I will do X only if Y") and what I will term 'contingent' intentions,<sup>3</sup> where no explicit condition has been made in the person's mind – i.e. the act is intended unconditionally at present, such that a change of mind would be required for it not to be performed.

It is not entirely clear whether Finnis means the 'contingent' intention to be contingent on its condition only by way of the subject's beliefs, or whether he is including causal preconditions which bypass the agent's explicit reasoning and instead help (or could in future help) give rise to an intention by way of, say, weakness of will or some other non-rational intention-formation process.

After discussion of conditional and contingent intentions Finnis moves on to discuss the related issue of preparatory intentions and applies such considerations to an example relevant to sexual ethics. He gives the following example:

On getting married, someone says to himself that he will be a faithful husband, but decides to keep his address book of good-time girls just in case marriage fails to give him all the satisfactions he expects. By that decision, he is in his heart an adulterer, even though he has made no substantive decision to use the book, telephone a girl or make a sexual assignation... in so far as it is itself formed by adopting a proposal, the preparatory intention has, on the side of the subject, the unconditionality and



## Marital Willing

so the self-determining, character forming significance of all intentions.<sup>4</sup>

What should we say about such a man? In these kinds of discussion, we need always to be aware of the distinction between three different ways of expressing or recognising one's bad character: a) prediction of, without any kind of intention to enable, one's own likely bad behaviour, whatever attitude one takes to such behaviour, e.g. "I might well do bad thing x," as contrasted to b) a current intention to *make possible* a future choice to do something bad and c) a conditional intention to do that bad thing. It is important clearly to distinguish these three.

By describing the accomplished action of retaining the book as merely an "intention" Finnis risks inviting a confusion between the decision to keep the book and the future intentions which may yet arise – but which Finnis accepts have not at this point been adopted. The agent is leaving a future option open, even taking steps to facilitate a possible future course of conduct. The charge of 'adultery in the heart' may indeed be justified but requires more argument, as this is not the standard case of preparing for adultery one has already decided to commit in certain circumstances, nor is it even taking an adulterous pleasure in thoughts of the good-time girls, as the book retention may be done 'in cold blood' (though morally, it may be all the worse for that).<sup>5</sup> Compare a partially-reformed alcoholic who, knowing the frustration of being without alcohol when the urge is upon him and unsure whether he wishes to put his possible future self through that, for years keeps an unopened bottle of whiskey on the sideboard.

Continuing, Finnis explains that the choice to keep the book is

not yet the choice to do X, nor even the choice to *do X if*  
C. It is the definite intention not to exclude the option of

doing X from (further) deliberation, as a mere temptation, but rather to retain that option within one's deliberations as still an *eligibilium*, as choiceworthy (choosable *by me*). In that sense, one gives a real though as yet limited assent of will to that option (while not yet preferring it to others by choosing to adopt it).<sup>6</sup>

This certainly seems right. A spouse, should she discover that such a book had been retained, would not be happy – even if she accepted that the book was not retained in pursuit of a firm plan to betray, as opposed to a firm plan to make such a future plan possible. But, as with the alcoholic, this does not seem necessarily to amount to a present ‘assent of will’ to the adultery itself – something which Finnis’s terminology of “real though as yet limited assent of will” obscures. It is a case in which the husband recognises that all his current good intentions may come to nothing, he may face great temptation and decide to succumb to it, and if so he will want his book – a firm plan to keep which he has formed. The initial description of the husband’s decision, “just in case marriage fails to give him all the satisfaction he expects” tends to suggest a present conditional intention: to have sex with one of his “good time girls” if satisfaction S is not forthcoming. And that is a present intention, even if it is conditional. It might even be expressed “I will have sex with G unless I get satisfaction S.” But the discussion shows that that is not what Finnis means. There is no such present intention, and more needs to be said before concluding that the husband has committed adultery ‘in his heart.’

However, might it not be correct to say that the mere treating this kind of option as choiceworthy is necessarily seriously morally wrong, with all the character-forming consequences that entails? Finnis appeals to Aquinas on this question and tells us,

## Marital Willing

St Thomas reserved a place for an act of will whereby one assents to a definite proposal for action yet without making a choice; he called this assent *consensus*. It is a sort of willing: one is minded, disposed, willing to treat some means, X, as acceptable. Very often some alternative option, Y, is also acceptable; one has not yet adopted (and may in fact never adopt) either X or Y in preference to the other. In this common case, *consensus* is distinct *re* as well as *ratione* from *electio*, choice. But in any case what makes the *consensus* is not simply the judgement that X (and Y) would be an effective way of securing some benefit in which one is interested, but the treating of X (and/or Y) as an acceptable option, the being interested in an option as one which I will keep in play as a live option notwithstanding that there remain incompatible alternatives in which I likewise remain interested.

Finnis then adds, “As a real disposition, consent can be morally sinful acceptance of a possible option even though, not having chosen to do it, one does not intend, even conditionally, to do it. But Aquinas’ formal account of consent uses the term *placet* for what I have called ‘treating as acceptable,’ and his later discussion of sinful *consensus* goes off on a particular type of case where one takes a kind of sensory pleasure, *delectatio*, in imagining and savouring some possible action.”<sup>7</sup>

It does seem that “looking at a woman to lust after her,” the phrase from Matthew 5:28 quoted by Finnis at ftn42, is not the only morally objectionable attitude in sexual matters: speculative preparation for a possible future desire or plan would also be morally objectionable.<sup>8</sup> The argument set out earlier in this paper concerning the relationship between non-marital and marital acts

should suggest that there is a problem, even if we do not go as far as Finnis in describing this as “adultery of the heart.”<sup>9</sup>

In a later paper, “The Good of Marriage and the Morality of Sexual Relations: Some Historical Observations”<sup>10</sup>, which focuses very much on conditional intention and marital acts, Finnis widens the scope of his argument. In examining this paper we will make an attempt to draw out more precisely how a non-marital choice can be said to ‘harm’ or ‘damage’ the ability of human persons and societies to instantiate the good of marriage.

Without the possibility of *truly* marital intercourse the good of marriage is seriously impaired. Finnis, quoting Germain Grisez, supports the proposition that a choice such as the choice to engage in nonmarital sex, “damages the body’s capacity for the marital act as an act of self-giving which constitutes a communion of bodily persons.” Finnis then states that such damage

is a damage to the person as an integrated acting being; it consists principally in that disposition of the will which is initiated by the choice to engage in an act of one or other of the kinds in question...to say “damages the body’s capacity for self-giving” is, I think, elliptical for: that choice deforms one’s will in such a way that unless one reverses one’s choice (repents), it disables one – precisely as a free, rational, sentient, *bodily* person – from engaging in a bodily act which would really express, actualize, foster and enable one as a spouse to experience the good of marriage and one’s own commitment (self-giving) in marriage.<sup>11</sup>

To argue his point Finnis introduces the notion earlier discussed of “conditional willing.”<sup>12</sup> He describes cases of “obvious

violation” as ones in which “one or both of the spouses would be willing, or prefer, to be engaged in the act with someone else. Such a spouse is *conditionally willing* to engage in this sex act with someone not his or her spouse. That is, *if* such another person were available and all the other conditions were in place, this spouse *would* – unless he or she had a change of mind – have sex with another person.” Finnis adds, “Let us call such a conditional willingness to engage in extra (i.e. non-) marital sex acts *consent* to nonmarital sex.”<sup>13</sup>

There are problems with this exposition. “Prefer” is ambiguous: “they would prefer” suggests an occurrent desire, but might also indicate a counterfactual choice they might make in some other situation. And what of the important distinction Finnis doesn’t make, namely that between possible future intentions (if intentions is even the right word – not if the option is seen as really counterfactual<sup>14</sup>) which the subject deliberately *entertains* (and thereby perhaps expresses and/or acknowledges his *akrasia*) and those he doesn’t entertain. There is also the undiscussed issue of whether acknowledging such likely intentions also includes accepting them – in the counterfactual context. The final line quoted above amounts to a mere stipulation whereby “conditional willing” acts a bit like “suspected” or “alleged” as applied to terror suspects, i.e. encouraging the reader to take it as a mere modifying adjective adding extra detail, when in fact a suspected terrorist is not a kind of terrorist at all but a kind of suspect.

Given this, if one ‘consents’ (scare quotes required) to extra-marital sex, one’s choosing to engage in sex with one’s spouse “cannot succeed in being an actualisation of *marriage*.”<sup>15</sup> It seems that the only way to restore one’s capacity to express marital self-giving is to negate/repent of one’s ‘consent’ to any act of that kind (i.e. extra/non-marital sex).<sup>16</sup>

However, on Finnis's account it would seem that even counterfactual unacknowledged *liability* to give 'consent' would amount to a kind of stain which spoils all marital sex until removed. But that implies that there is some kind of 'staining' event – which isn't the case with a mere disposition. And does a mere change in one's liability remove the stain or must this involve repentance? And if the latter, how is one to repent of having a stain one is unaware of? In that case properly *marital* sex must remain an illusion.

To clarify some of these matters Finnis provides the reader with a number of examples, prefacing them thus:

We have been considering the consent to nonmarital sex which may shape and divide the willingness of a married person, where the consent – conditional willingness – bears on that person's own actions in the (hypothetical) here and now.<sup>17</sup>

He moves to example A:

I am so keen on having sex now that if an attractive woman were available (and my wife were not here), I would have sex with her, right now.<sup>18</sup>

This case is of a kind Finnis believes is relevant to Aquinas' discussions.<sup>19</sup> He cannot mean those cases discussed in his previous paper which were concerned with having sex merely for pleasure and thereby failing to connect with the good of marriage. True, thinking about having sex with another woman while having sex with your wife is an example of failed connection, but here 'conditional willingness' is just one form this can take. One might fail to connect maritally in all sorts of other ways. So, while in some cases the fact that one "would be willing"<sup>20</sup> to substitute another

for one's spouse and even explicitly recognises this fact may be a sufficient indicator of a failure to connect in a truly marital way, it's not necessary for such a failure to connect, and is not the essential issue.

It might be argued that the fact that a spouse 'would' entertain adulterous thoughts, if they occurred to him, is evidence of a bad character likely to affect each 'marital' act, whether or not such thoughts do occur to him. However, Aquinas appears to be concerned with an actual identifiable defect in the actual sexual act, and doesn't need to consider 'possible worlds' in order to discover whether a given sex act is properly marital.

So, thinking A (and in this case, A's merely being objectively true) may (given normal psychological facts) be sufficient indicator of a failure to 'connect' in the Thomistic sense outlined, but it is only that. It's a sign of a defect which could perhaps be otherwise expressed. It establishes (fairly explicitly): "I'm so keen on having sex now" that I am only interested in the sex, and not in my wife.

Example B, "I'm not interested in having sex with anyone other than my husband right now, but if he goes off to war, I might well have sex with an attractive man"<sup>21</sup> doesn't have any implication that one is only interested in sex and not in one's husband. It is a contingency-prediction, and it also does not necessarily imply that one *approves* of the hypothetical course of action, whatever that amounts to. Though, as with all of the examples Finnis gives, the fact that it is in the first person and the idea that one might be thinking it occurrently while having sex with one's spouse gives an extra sense that it is an inappropriate thing to think.

Finnis's other examples of propositions expressing wrongful conditional willingness seem even less convincing. C is:

While I'm married I'm not going to have extramarital sex, but if I weren't married, I'd try to have sex with someone attractive once a week, to keep fit.<sup>22</sup>

The inclusion of "to keep fit" seems redundant, not least because there's nothing so obviously wrong with having sex to keep fit provided that a proper 'marital' motive is also present. Otherwise the example seems as problematic as the first two.

Example D is: "While I'm married I'm not going to have extramarital sex. But I think it's quite OK for people who want to have *extra-marital* sex to do it..."<sup>23</sup>

Example E is: "While I'm married I'm not going to have extramarital sex. But I think it's OK for unmarried people to get sexual satisfaction in any way they like, consistent with being fair to others..."<sup>24</sup>

The statement that the actor "thinks it's OK" sits uneasily with Finnis's rejection of a "legalistic morality of prohibitions and permissions."<sup>25</sup> That rejection allows Finnis to make the claim "it's OK" means "has some value."<sup>26</sup> But that is an assumption produced without argument. For it could equally be asserted that OK means simply OK, and not necessarily good or desirable. However, even if we accept Finnis's assumption, the preceding criticisms of A still apply *a fortiori* to B-E.

In relation to D and E, Finnis states, "the thought that it is permissible and OK for certain other people to get such satisfaction by nonmarital sex acts becomes deliberate approval, i.e. a thought of the form: "If I were in their situation, I would be willing to get sexual satisfaction by nonmarital sex acts."<sup>27</sup>



At ftn107<sup>28</sup> Finnis glosses this by making it wholehearted approval of the core moral features of the action – and not their incidental or partly good effects. With that and what has been stated above kept in mind, to say “OK means has some value” establishes a thought of the form: “If I were in their situation I would be willing to get sexual satisfaction by nonmarital sex acts.”

Yet this seems a leap, unless “in their situation” can be taken far enough (including, perhaps, changes in personality) to guarantee that result. Finnis continues, saying that the thought is “If I were then and there interested, I would under certain circumstances, and without having to violate or change any of my present moral beliefs, be prepared to choose to have nonmarital sex.”<sup>29</sup> Note the phrase, “if I were then and there interested” – this can, of course, do the job of overcoming any loyalty to one’s spouse (in case D) that might prevent one having the thought, and more importantly any such loyalty that might otherwise be contemplated as surviving in the counterfactual situation.

If we are to give a tight account of how nonmarital acts might be said to ‘violate’ marital goods then the approach here examined will need to be improved on. This is not to deny that, in general, the idea of ‘keeping an option open’ is problematic if the option is problematic, and in the next chapter I will examine questions relating to Christ’s admonition at Matthew 5:28 which is, of course, relevant to the present discussion. In closing this section, I think it worth considering what might be the practical results of taking Finnis’s concerns seriously.

If we accept (as someone influenced by Finnis’s argument would accept) that someone who doesn’t have a disposition to reject the idea of extramarital/nonmarital activity – or at least *tend*

*strongly* to reject it – can't be engaged in *fides*-type activity, then this may have highly counterintuitive implications:

(a) If a spouse is confused about what might be an OK structure for a sex act (e.g. he thinks that sexual intercourse with a perforated condom-style device to collect semen for fertility-tests is OK) and believes that such acts, in themselves, have 'some value' he can't engage in *fides*-type acts, assuming that he is, in fact, mistaken in that belief.<sup>30</sup> Does the spouse have to be an infallible moral expert, at least on sexual matters, in order to engage in *fides*-type acts? Does he have to be completely convinced about the right opinions?

(b) A spouse may think that homosexual activity can be OK and has 'some value' while being emotionally horrified by it himself and therefore *very far* from either dwelling on it illicitly or saying that, if he were homosexually inclined, he'd have a civil partner – let alone that, if he ever does experience homosexual urges in the future, he will act on them.

(c) a spouse may adhere to a moral philosophy sceptical of popular forms of consequentialism but eschewing moral absolutes (e.g. the kind of approach to ethics championed by Bernard Williams<sup>31</sup>) and may think that adultery is OK, i.e. 'has some value' (or *may perhaps* be OK) in desperate circumstances, while being *very far* from dwelling on it himself (e.g. taking deliberate pleasure, or any pleasure at all, in thinking about cases of adultery in concentration camps to save lives). Does such a judgement,

reached by the spouse last night, after watching a sad documentary regarding what someone *else* did mean that he can't have marital sex now? Or is it only if it flashes before his mind, however unwillingly, just before intercourse? Also, what if the man were an out-and-out consequentialist, but never connected that with his views about marriage?

(d) Imagine a voluntarist (“God could command adultery”) or someone who thinks that polygamy is OK for biblical patriarchs. Can such a person not engage in *fides*-type sex?

(e) Imagine a coward who thinks “I would do anything to avoid death/torture – it's only human” (i.e. he's not just predicting his own weakness but mentally endorsing it in some way). Can he or anyone like him who is not prepared for martyrdom have marital sex? Finnis's arguments suggest a perfectionism which makes it hard to appreciate St Paul's admonition at 1 Corinthians 7:9 or Augustine's *De bono conjugale*. Seeing marriage as redemptive or curative assumes there are states of ‘imperfection’ that might be improved and chastened through marriage.

While we may accept that sometimes a strong disposition on the part of a spouse to make bad future choices or bad choices in counterfactual situations may suggest the absence of a good (enough) intention and/or disposition needed (a) to get married or (b) to engage in marital acts (these require a minimum of good will<sup>32</sup> which may be absent if a husband is disposed to betray/beat

up/murder a wife at a moment's notice), such cases go way beyond the kind of cases Finnis wants to rule out.

Conditional willing of morally impermissible actions tells us something about the moral agent, as does the *liability* to will these actions in certain unrealised contingencies. Any effect on the validity of marriages or marital acts will depend on the moral weight one places on the relation of the agent to his pursuit/realisation of various 'basic goods.' But this need not (though it might) affect the moral permissibility of the act intended here and now. These two must not be conflated.<sup>33</sup>

### **Conclusion**

Accounts of sexual wrongdoing will typically be concerned with concepts other than conditional intentions, namely lust and concupiscence. An account of ethical sex will therefore need to examine these concepts, and their opposites in terms of morally good desires and virtue, if it is to give this area of morality its due.

The attempt to account for major ethical principles in sexual ethics simply in terms of the relation of intentions to marital goods appears to be doomed to failure, not least because in capturing what seems plausible about anti-marital intentions the term 'intention' ends up being used to cover mental events which cannot be classified as such. In showing that this is the case here I hope to have shown that too blunt an instrument is being deployed and that an examination of the concepts mentioned above is required for a richer account of ethical sex. This means giving an account of the teleology of desire and an explanation of how that teleology relates to sexual virtue – an explanation that goes beyond a narrow examination of anti-marital intentions and 'background beliefs.'

# Notes

## Chapter 4: pp. 127-140

<sup>1</sup> The argument for how conditional intentions can violate commitment to the good of marriage as expressed in the marital act is set out in most detail in a general paper by Finnis (1994) and also in Finnis (1997). In more condensed form, the argument is put forward in Finnis (1998) and in Finnis (2009). The latter paper is notable for the claim that “Humeian and *Kantian* models” (my emphasis) are those “in which sub-rational motivations set the ends, goals, purposes and reason comes in only to devise means and/or to eliminate the irrationality of contradiction” p.390. This tellingly erroneous claim, as any reading of Kant will confirm, fails to take into account clear statements to be found in e.g. Grounding for the Metaphysics of Morals #413ftn3 where Kant asserts, as he does elsewhere, the existence of a “pure” moral interest in a course of action as intrinsically right. See also Allison (1990).

<sup>2</sup> For a brief summary of the ‘basic goods’ and what is meant by ‘against,’ see Chapters 1 and 2. As we saw in Chapter 1, according to New Natural Law Theory, sexual immorality can involve offences against the good of life, even if it necessarily also involves offences against the good of marriage.

<sup>3</sup> I am much indebted to Tim Wilkinson for valuable conversations, disagreements and observations about conditional intentions, especially in relation to the earlier Finnis paper, and for the useful term ‘contingent intention.’

<sup>4</sup> Finnis (1994), 172-173.

<sup>5</sup> It would, however, be surprising if coldblooded book retention without current lustful feeling were not seriously unchaste as opposed to a momentarily roving eye which might be a lesser infringement of chastity.

<sup>6</sup> Finnis (1994), 173.

<sup>7</sup> Finnis (1994), 173-174 and refs therein.

<sup>8</sup> The question here is not whether such a mental stance is wrong, but rather whether it is the kind of thing Aquinas was referring to in the passage cited. Finnis (1994) 174 fn.42 writes, of de Scala, “he notes the explanation offered by Augustine and Jerome, that the phrase is equivalent to “so that he may look at her in order inwardly to lust after doing it [adultery] if the opportunity were to present itself (*ides ut eam eo ine videat ut faceret si facultas se offeret*).” With regard to what I here call “speculative preparation” it might be objected that all that is prepared for is a future decision, assuming that the husband has not yet decided to commit adultery (by analogy, we might think of a woman who has a prenatal test not knowing what she would decide concerning abortion if a disability were detected).

<sup>9</sup> Though I do not deny that if lusting after someone is adultery of the heart, even if there is no intention to actually commit adultery, then it

may not be at all unreasonable so to describe preparatory intentions for possible future choices to commit adultery.

<sup>10</sup> Finnis (1997).

<sup>11</sup> Finnis (1997), 119. Grisez (1993) discusses these and related issues at pp.553-737.

<sup>12</sup> This does not appear to differ from possessing a conditional intention.

<sup>13</sup> Finnis (1997), 119-120.

<sup>14</sup> We can distinguish between X's wanting to (perform-an-action-of-type) V-in-circumstance-C, on the one hand, and, on the other, X, when he's in circumstance C, wanting to V. The former will normally be immoral or at least morally problematic when V-ing-in-C would itself be immoral; not necessarily so the latter. As Francis shouldn't take and wear your coat when you've denied Francis permission, so Francis shouldn't want it to be the case that both (i) you deny him permission to take and wear your coat and (ii) he nevertheless does so. It is, however, less clear that in a situation where you've denied Francis your permission to take and wear your coat, it's wrong not just for Francis to do so anyway but even (avoidably) for Francis to (continue to) want to do so. Likewise, even if it's morally wrong for Howard (avoidably and with his own consent) to desire extramarital sexual contact, that may not exclude Howard's wanting (in the weak sense of finding appeal in the thought of) sexual contact with Cordelia, even though they are not in fact married to one another. That Howard isn't really married to Cordelia doesn't mean that Howard's wanting sex with Cordelia has to be Howard's wanting unmarried sex with her. Is it necessary for moral permissibility (better, to avoid vice) that Howard specifically imagine himself to be married to Cordelia whenever Howard thinks, perhaps in a vague and passing way, about touching Cordelia? What if Howard merely leaves that detail out of the imagined scenario? Does Francis have first to imagine buying or borrowing the coat licitly to take pleasure in thought of wearing it? Is sex different? I am grateful to JLA Garcia for this example and subsequent discussions and disagreements.

<sup>15</sup> Finnis (1997), 120. Consent here is understood, in Finnis's terms (fn.102) as "a disposition which (like all other acts) lasts in the will un-

less and until reversed by being repudiated (repented of, formally or informally).”

<sup>16</sup> Recall that Finnis is concerned not merely about ‘damage to capacity’ but about conditional intentions, as he sees them. It is not clear here how ‘conditional intentions’ are supposed to ‘damage capacity’ or whether they might be the result of a ‘damaged capacity’ in the first place and not vice versa.

<sup>17</sup> Ibid.

<sup>18</sup> As with Finnis’s subsequent example, A is framed in the first person – i.e. as an *acknowledged* contingency. That means that Finnis’s definition of conditional willing in terms of the truth of an objective counterfactual conditional is never tested in these examples. Perhaps this is a mistake, and Finnis only means to address counterfactuals that are acknowledged as true by the party at the time the spouse has sex (or some time before, and without repentance).

<sup>19</sup> Finnis (1997), 103.

<sup>20</sup> There is a distinction to be made between “I am not committed enough even to want to exclude alternative partners” and alternatively “I am so weak in these matters I don’t know what I’d do.”

<sup>21</sup> Finnis (1997), 121.

<sup>22</sup> Ibid.

<sup>23</sup> Finnis (1997), 122.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> Finnis (1997), 123.

<sup>29</sup> Finnis (1997), 122-123.

<sup>30</sup> Certainly the Catholic Church has not pronounced on this question, to the best of my knowledge, and many Catholic ethicists would accept



such tests. Nevertheless the man may, in fact, be mistaken in thinking of the structure of intercourse here as morally OK (or as ‘having some value’ in Finnis’s terms).

<sup>31</sup> See for example Williams (1995), 35-45 and Smart and Williams (1973).

<sup>32</sup> That said, an error can occur when people assume that sex is necessarily unethical if one or both spouses do not feel fully reconciled after a quarrel, not seeing that where the preconditions are in place, such feelings, within reason, need not undermine the goodness (and indeed potentially reconciliatory powers) of the act itself. Certain modern religious writings on sex seem to encourage a focus on sexual and emotional perfectionism that is positively harmful to couples.

<sup>33</sup> A couple tired of NFP who decide on sterilization could still be having marital intercourse because they are accepting all the fertility that is here *now* (i.e. during the current infertile period). In contrast, a couple one or both of whom intend an act of infidelity in the near future cannot have genuine marital intercourse because fidelity is not, unlike acceptance of fertility (outside the context of getting married in the first place) a matter of individual acts but is a longer-term concept. My point about acts and moral agents in the main text should not be seen as similar to the kind of approach which Bennett (1995) has championed, namely the idea that an agent’s ‘intentions’ are only of real relevance in assessing his/her moral character but not when assessing the ‘first-order’ moral question concerning the permissibility or impermissibility of an act. This view is addressed briefly in the next chapter. For now it is important to distinguish between a view about the significance for someone’s character of the background positions that person holds, without this being assumed to affect radically the morality of an act (though it may of course affect the agent’s appreciation of the goodness of the act) and the very different view of Bennett described above.

