

VATICAN INSTRUCTION ON REPRODUCTIVE TECHNOLOGY

Links between "Humanae vitae" and the recent "Instruction on Respect for Human Life in Its Origin and on the Dignity of Procreation" are inevitable. The first forbids certain forms of birth control, the second certain forms of birth promotion. Both documents set forth lofty descriptions of marriage, sexuality, and the human person; and both prohibit certain interventions into the sexual act. The absoluteness of the prohibitions taken by the documents seems heartless to some and courageous to others. The debate is about the means, the how of control or promotion.

Because the Instruction is recent (March 19, 1987), it has been the topic of popular writing, but has not yet been subjected to a great deal of scholarly scrutiny.¹²⁰ Only time will tell whether it will generate a body of literature comparable to that stimulated by "Humanae vitae." The latter was a careful, comprehensive, and tightly-written text. The Instruction is rambling, repetitious, and vulnerable to a wider range of objections. The wisdom of Solomon was needed to work through the myriad of personal and social factors involved; instead, we received something closer to a handbook.

The problems are not new. Rachel's lament reaches across the centuries: "Give me children, or I die!" Today it is estimated that one couple in six is infertile. Because of technology, the husband cannot so simply repeat Jacob's reply: "Can I take the place of God, who has denied you the fruit of the womb?" (Gen 30:1-2). In Abraham's time the "institution"

against HIV Antibody Testing" 19-24: all in *AIDS and Public Policy Journal* 2, no. 1 (Winter 1987). Also Gordon Block, "A Burden Too Heavy to Bear," *Time*, Aug. 31, 1987, 39; Gerald M. Oppenheimer and Robert A. Padgug, "AIDS: The Risks to Insurers, the Threat to Equity," *Hastings Center Report*, October 1986, 18-22. The other area is the problem of education on AIDS and its effectiveness in altering sexual and addictive behaviors in high-risk groups. See William Check, "Public Education on AIDS: Not Only the Media's Responsibility," *Hastings Center Report* (Special Supplement) 15, no. 4 (August 1985) 27-31; Ralph DiClemente, Jim Zorn, and Lydia Temoshok, "Adolescents and AIDS: A Survey of Knowledge, Attitudes and Beliefs about AIDS in San Francisco," *American Journal of Public Health* 76, no. 12 (December 1986) 1443-45; *Health Education Quarterly* 13, no. 4 (Winter 1986), the entire issue focusing on issues regarding education and AIDS; Leon McKusick et al., "Reported Changes in the Sexual Behavior of Men at Risk for AIDS, San Francisco, 1982-84—the AIDS Behavioral Research Project," *Public Health Reports* 100, no. 6 (November-December 1985) 622-29; Donald E. Reisenberg, "AIDS-Prompted Behavior Changes Reported," *JAMA* 255, no. 2 (Jan. 10, 1986) 171; John L. Martin, "AIDS Risk Reduction Recommendations and Sexual Behavior Patterns among Gay Men: A Multifactorial Approach to Assessing Change," *Health Education Quarterly*, Winter 1986, 347-58; Carol-Ann Emmons et al., "Psychosocial Predictors of Reported Behavior Change in Homosexual Men at Risk of AIDS," *ibid.* 331-46.

¹²⁰ A lengthy commentary on the Instruction instantly followed its publication: *Il dono della vita*, ed. Alio Sgreccia (Milan: Vita e Pensiero, 1987); forthcoming is a book by Lisa Sowle Cahill and Thomas A. Shannon, *Religion and Reproduction* (Crossroads, 1988).

of surrogate motherhood helped meet that problem.¹²¹ Then as now, the solutions we devise dialectically modify the way we think of society, families, individuals, and indeed our relation to God. The urgent question then is: Ought we to reject, tolerate, or promote those changes? It was once forbidden to offer the gift of life to another through organ donation. The Instruction, equally strong on principle, may be making the same mistake. Or it may be the needed word to stop us from technologizing life and the family.

Shortly after the Instruction was issued, Cardinal Joseph Bernardin presented an excellent commentary to scientists at the University of Chicago.¹²² His remarks have something of the moderating or redeeming effect which Bishop Francis Mugavero's clarification of the Vatican Declaration on Sexual Ethics had in its time. The following sections will parallel the four parts of Bernardin's speech: (1) overall context, (2) respect for the embryo, (3) respect for marriage, (4) respect for the sexual act.

I. General Remarks

A. Literary Genre

This document from the Congregation for the Doctrine of the Faith (CDF) is an "Instruction."¹²³ An instruction is not initiated by the pope. Its literary form—responses to specific questions from others outside the Vatican—is more suitable for decrees than edification. The Instruction simply repeats major principles from recent tradition, and it does not try

¹²¹ Jean-Louis Bruguès, O.P., "La F.I.V.E.T.E. au risque de l'éthique chrétienne," *Revue thomiste* (1987) 45-83, at 46-47; James Gaffney, "Hagar and Her Sisters: Precedent for Conduct," *Commonweal* 114 (1987) 240-42.

¹²² Joseph Bernardin, "Science and the Creation of Life," *Origins* 17 (1987) 21-26. Bernardin's listing parallels the problematic given by Charles Krauthammer: "The first, fetal manipulation and experimentation, is a threat to human dignity. The second, third-party donation of a gametes [*sic*] (eggs or sperm), is a threat to the family. The third, artificial insemination or in vitro fertilization that enables marriage partners to have their own children, is a threat to sexuality" ("The Ethics of Human Manufacture," *New Republic* 196, no. 18 [May 4, 1987] 17-21, at 18). Also worthwhile here are Oliver O'Donovan, *Begotten or Made?* (Oxford: Clarendon, 1984), and Kevin Kelly, *Life and Love* (London: Collins, 1987).

¹²³ Instructions have less authority than, say, encyclicals. Cf. Francis Morrissey, O.M.I., *The Canonical Significance of Papal and Curial Pronouncements* (Washington: Catholic University, 1981) 10. Calling attention to the level of authority of a document seems inevitable when it comes to sexual matters. Just as some Catholics give almost mindless assent to official teaching, others react negatively with equal mindlessness. Thus, novelist Mary Gordon says: "I have always felt it a safe proposition that whatever position the Vatican takes on the sexuality of women, I'm in a good place on the other side" ("Baby M: New Questions about Biology and Destiny," *Ms.* 15, no. 12 [June 1987] 25-28, at 28).

to refute criticisms raised against them. Considering the public audience it was to receive, perhaps it should have striven to be more uplifting and positive or articulate and well-argued, but such was not its literary form.

The document itself concludes with an ambiguous invitation: "The precise indications . . . are not meant to halt the effort of reflection, but rather to give it a renewed impulse in unrenounceable fidelity to the teaching of the Church." Patrick Vespieren stresses the first part of this invitation, while William E. May emphasizes the latter. Vespieren underscores the need for further reflection because on the particular issues discussed in the Instruction "the Church is not able to take advantage of a sufficiently long and unanimous tradition."¹²⁴ Stressing the second part of the CDF invitation, May insists that this document is to be received with a "religious assent of soul." There can be no dissent in the Church.¹²⁵

This debate will doubtless continue. But Bernardin's remarks may be helpful. After praising the natural-law tradition found in the Instruction, he notes that this tradition is fallible.

It is possible that what appears to be a proper understanding or application of an ethical principle in one age may be found to be wanting or even incorrect in another. It is also possible to confuse the *application* of a principle for the *principle itself* Some of those who read the instruction will do so with some skepticism in light of some misjudgments which the teaching church made in the past.¹²⁶

B. Consultation

The document's claim to be the result of "wide consultation" has been disputed. A CDF spokesman insisted that 22 scientists, over 60 theologians or moralists, and various declarations of episcopates had been consulted. Three issues have been raised: secrecy, pluralism in the

¹²⁴ "Les fécondations artificielles: A propos de l'Instruction romaine sur 'le don de la vie,'" *Etudes* 366 (1987) 607-19, at 617; 40 years ago Gerald Kelly, S.J., in these "Notes" argued in favor of artificial insemination, but others opposed: *TS* 10 (1949) 67-114, at 113-14. Even before the document had been published, Richard A. McCormick, S.J., claimed "critical response is . . . nothing less than a dimension of our loyalty to and respect for the magisterium" ("The Vatican Document on Bioethics: Some Unsolicited Suggestions," *America* 156 [1987] 24-28, at 24).

¹²⁵ "The Magisterium and Bioethics," *Ethics & Medics* 12, no. 8 (August 1987) 1-3. May's full position is more complex, if not also more perplexing. He holds that "religious assent" includes withholding assent and proposing alternatives to present teaching. But, for him, there is no appeal beyond the magisterium. That may or may not exclude the Bible, but surely it would exclude all other sources of insight. For a recent analysis of *obsequium religiosum* and dissent, see Ladislav Orsy, S.J., "Magisterium: Assent and Dissent," *TS* 48 (1987) 473-98, at 487-97.

¹²⁶ "Science" 23. Orsy notes that the Church has never canonized one philosophical system, and natural law belongs to a philosophical system ("Magisterium" 486).

Church, and voices outside of the Church.

First, the secrecy. McCormick applauds the open process employed by the U.S. bishops in their two recent major pastoral letters. By contrast, he says, "Vatican documents are conceived and drafted in almost investigative secrecy. Is the Holy See [read: Spirit] less active because a document goes through three or four public versions before becoming final? Is the teaching less authoritative because it listens to all competencies?"¹²⁷ It could be replied that if documents appear to spring full-blown from Rome as from the head of Zeus, without any of the give-and-take that accompanies human debate, then they give the appearance of transcending human wisdom. Whether that appearance should be fostered is an ecclesiological question we need not pursue here.

The second question is whether potentially disagreeing voices were consulted. The recent U.S. pastorals followed not the Vatican model but the pattern of ecumenical councils in allowing open discussion and disagreement.¹²⁸ It has been reported that various episcopates were discouraged from working out their own positions on these issues and that offers of help from persons known to have differing views were not acknowledged. Still, some report that an earlier, more restrictive version of the Instruction was rejected; and so some disagreeing voices must have been raised.¹²⁹ Nevertheless, one wonders about the range of different voices heard. The U.S. is perhaps the center of bioethics in the world, but few if any well-known Americans seem to have been consulted.

What was new in developing the U.S. pastorals was the widespread public consultation, inside and outside the Church, and the request for public criticism on early drafts. That process suggests the third point. John Paul II has proposed the general ethical maxim that people should be "able to participate in the decisions which affect their lives and futures."¹³⁰ The Instruction is set out as a basis for public policy. Catholics are urged to make the positions of the Instruction a matter of civil law, and encouraged to practice "conscientious objection" and passive resistance where this does not happen. Bioethics has been a growth

¹²⁷ "Vatican Document: Suggestions" 26, with correction at 88.

¹²⁸ Orsy notes that, usually and understandably, Vatican documents are done by Roman theologians, but that, when councils meet, the Roman view often does not prevail. In fact, 71 of 73 schemata proposed by mainly Roman theologians at Vatican II were roundly rejected or revised when an international perspective was taken ("Magisterium" 478).

¹²⁹ *Herder Korrespondenz* 41 (1987) 152. The president of the International Federation of Catholic Universities, Michel Falise, offered to speak with Ratzinger in September 1986 about the topics of the Instruction, but did not receive any response; cf. Klaus Nientiedt, "Der Natur nachhelfen oder sie ersetzen?" *Herder Korrespondenz* 41 (1987) 215-21, at 218.

¹³⁰ Address at Monterey, Mexico, Jan. 31, 1979, cited in "U.S. Bishops' Pastoral on Health Care," *Origins* 11 (1981) 396-402, at 401.

industry in the public sphere. It is regrettable that the reflections and concerns of those outside the Church are not more in evidence.

LeRoy Walters, director of the Center for Bioethics at the Kennedy Institute of Ethics, recently surveyed 15 major bioethics committees throughout the world.¹³¹ These committees unanimously agree to the ethical permissibility of some of the practices the Instruction condemns, such as IVF. These groups were themselves deliberately composed of persons of diverse background and commitments. They were not simply protechnology; e.g., 70% of them reject surrogate motherhood and they are as protective of the human embryo older than 14 days as the CDF is. Leaders of other Christian and Jewish communities have regularly reached conclusions roughly similar to those of these major committees. McCormick argues that since Vatican II has taught that the truth also resides in other Christian communities, "the Catholic Church, on its own terms, is irresponsible if it does not listen to and weigh seriously the experience and witness of other Christian bodies on moral questions."¹³² In turn, according to Vatican II, these "Christians are joined with the rest of men and women in the search for truth."¹³³ Or, at least they should be.

C. Technology

Can we use medical techniques to overcome barrenness? The Instruction states quite clearly that it is not opposed to technology. According to Bernardin's commentary, "the effort to correct what would limit or eliminate the human response to the divine call to be fertile and multiply is a noble and worthy venture." Bernardin's accent is not so much on limits as on coresponsibility with God, on participating in a divine purpose, and on a creativity that is to "be evaluated in the light of perduring and normative human values."¹³⁴ Bernardin seems to follow John Paul II's thesis that exercising "dominion" is the hallmark of human existence. The Instruction, however, draws on John Paul II's warning about "the temptation to go beyond the limits of a reasonable dominion over nature." It thereby emphasizes limits and opposes what it calls "domination" by technology. Obviously, both concerns are valid. The

¹³¹ LeRoy Walters, "Ethics and New Reproductive Technologies: An International Review of Committee Statements," *Hastings Center Report* 17, no. 3 (June 1987) Special Supplement 3-9.

¹³² "Vatican Document: Suggestions" 27-28.

¹³³ Pastoral Constitution on the Church in the Modern World, no. 16.

¹³⁴ "Science" 23-24. Cf. also Sidney Callahan, "Lovemaking and Babymaking," *Commonweal* 114 (1987) 233-39, at 234: "the mastery of nature through technological problem solving is also completely natural to our rational species; indeed, it is the glory of *homo sapiens*."

question, already raised in Genesis, is how to distinguish between dominion and domination, i.e. the question of reasonable limits.¹³⁵

The Instruction asserts that any technology that would "substitute" for sexual intercourse must be a technology that dominates and cannot be an exercise of dominion. In remarks that parallel the positions of other defenders of the Instruction, Berquist explains this claim:

technology assumes the dominant role when it . . . treat[s] the human person as if he existed to be used as a means to the ends proposed by technology rather than exclusively for the expression and fulfillment of his own nature. . . . Significant among these properly human activities which are not to be displaced by technology is the act of love in marriage.¹³⁶

Several remarks come to mind. We might first note that it is the couple who freely seek out reproduction clinics for their own needs. Second, commentators suggest that the euphemism "the act of love in marriage" increasingly has misleading consequences. There are hundreds of kinds of acts of love in marriage, only a few of which have to do with genital relations. There seems to be little basis in the literature or in experience for saying that love-making in either the sexual or nonsexual sense is displaced by technology in the recourse to homologous forms of reproduction. In fact, the record may be the opposite. Love-making in a marriage often suffers when there is infertility. And physicians often encourage marital intercourse as part of the whole process.

McCormick summarizes the Instruction on this point: "In brief, when a child is 'conceived as the product of an intervention of medical or biological techniques,' he cannot be 'the fruit of his parent's love.' " He then comments: "This is a *non sequitur*, and both prospective parents and medical technologists would recognize it as such. Sexual intercourse is not the only loving act in marriage."¹³⁷ There are many kinds of love, most of which normally are present in a marriage. Interpersonal bodily intimacy is one kind. The creative hope for a child is a second kind. Co-operation in important activities (such as would be required to go through homologous artificial reproduction) is a third. An agapic affirmation of a spouse's fertility (such as would be required in heterologous reproduction) is a fourth. In addition, there is a myriad of other enactments of love within a marriage. Artificial reproduction does not "replace" any of these

¹³⁵ Vespieren, "Les fécondations" 608. For a brief history of the shifting emphases in natural-law theory between submission to limits and expansive creativity, cf. Timothy O'Connell, *Principles for a Catholic Morality* (Minneapolis: Seabury, 1978) 134-43.

¹³⁶ Richard Berquist, "The Dignity of Human Life and Procreation," *Crisis* 5, no. 5 (May 1987) 24-28, at 25.

¹³⁷ Richard A. McCormick, S.J., "The Vatican Document on Bioethics: Two Responses," *America* 156 (1987) 247-48, at 248.

loves, nor need it replace loving sexual acts open to procreation.¹³⁸

Third, even if one agreed with Berquist that each human exists "exclusively for the expression and fulfillment of his own nature," it is sterility, not intervention, that frustrates that fulfillment. Reproductive technology is a way of achieving an important human goal. It is a replacement for a nonfunctioning human biological capacity. No one should choose an artificial heart over one's own natural heart, but an artificial heart can be used when one's own is not functioning. The alternative in the latter case is death, and the alternative in the former is childlessness.

Berquist continues: "When fertilization is artificially separated from its human context, it is reduced to a subhuman level. It takes place in a way suitable for beings without dignity, thereby asserting the domination of technology over the origin of the human person."¹³⁹ Four comments. (1) Medicine is a human activity, and therefore medical fertilization is not "subhuman." (2) Berquist surely uses the phrase "its human context" to refer to loving genital union, but what needs to be shown is that this is the only way that humans can conceive a child. Normally, eating should be done in the human context of self-love and other-love, but this does not mean that being fed intravenously is a subhuman act. (3) Granted that subhumans can be artificially reproduced, it does not follow that the artificial reproduction of humans is therefore subhuman. The normal procedure of medical research is to experiment on animals before human beings, and, if anything, the hope is to treat animals as if they had biological systems like humans. (4) It is overkill to say that these medical techniques represent—to use the words of the bishop of Nantes, France—the "absolute power of human beings over human beings."¹⁴⁰ We legitimately allow a one-week-old baby to be totally subjected to medical life-saving surgery; so it is not obvious that using medical techniques in life-giving is so much the worse. The former is not contrary to dignity, and it is not easy to see how the latter must be.

D. Moral Methodology

Commentators have noted that to understand the Instruction,¹⁴¹ one has to go back to the moral methodology that underlay "Humanae vitae."

¹³⁸ Jeanne et Olivier Macherel and Bénédicte et Vincent Fauvel, "Stérilité pour la vie," *Etudes* 366 (1987) 621-25; Marjorie Reiley Maguire, "The Vatican Has Gone Too Far," *Conscience* 8, no. 3 (May/June 1987) 14-15; Nientiedt, "Natur nachhelfen" 217.

¹³⁹ "Dignity" 27. See also Albert Moraczewski, O.P., "Marriage and Artificial Procreation," *Ethics and Medics* 12, no. 9 (September 1987) 3-4.

¹⁴⁰ Emile Marcus, "The Meaning of Shock," *Health Progress*, July-August 1987, 56-59, at 59.

¹⁴¹ The Instruction names rights and duties, contemplation of the Incarnate Word, the

In both documents moral methodology significantly determines the conclusion. I shall look at natural law, experience, and tradition.

1) *Natural law*. Bernardin rightly commends the natural-law foundation of the Instruction; and Cahill attributes to natural law what she calls a "basic message" of the Instruction: "there is a fundamental, experience-based, cross-cultural connection among what might be called the 'variables' of human reproduction: genetic parenthood, social parenthood and a commitment to interpersonal and parental partnership with the person with whom one cooperates in bringing a child into being."¹⁴² The difficult moral question is to establish how close this "connection" must be. Is it loose, so that it may be broken for any reason? Is it tight, so that it may never be severed for any reason?

Bernardin and the CDF begin with the natures of the family, marriage, and the sexual act. They then proceed to reject anything that is not in accord with these natures. The demand is for an all-or-nothing connection. Any voluntary separation is evil. Thus, even if AIH would help a family, strengthen a marriage, and lead to the same ends as natural intercourse, it is still judged evil because it violates the nature of the sexual act.

Methodological differences are also reflected in the fact that in the Instruction suffering is not "factored in" as part of the moral analysis, but is reserved to a concluding section, where it is said to be a share in the Lord's cross. Suffering is thus a morally extrinsic consideration, to be handled as a spiritual theme, but not part of the moral reckoning itself. In other methodologies suffering itself is a disvalue and a reason for seeking alternatives.

Methodological differences appear in the debate over integrity as well. Both sides of the debate insist that human nature must be integrally considered, and both usually accuse the other of failing to do so. What integrity means, however, is different for each party. For the Instruction it means that procreation must be "desired as the fruit of the conjugal act, that is to say, of the specific act of the spouses' union." In the eyes of many this demand is a form of biologism. That is, the biological structure of human procreation is so sacrosanct that it cannot be circumvented even when it is nonfunctional and leads to significant loss for the persons and the marriage. On the other hand, when McCormick calls for

truth of human beings, and God's commandments as sources for its reflections. Ethicists can easily recognize what a mix of appeals these represent.

¹⁴² Lisa Sowle Cahill, "The Vatican Document on Bioethics: Two Responses," *America* 156 (1987) 246-47. We might also add gestational parenthood to Cahill's statement in order to acknowledge the existence of surrogate motherhood.

an integral personalism that "goes beyond such biological givenness,"¹⁴³ he is commonly accused of a hyperpersonalism. His "beyond" is read to deny the biological, rather than subsume it within a higher totality.

Integrity includes several notions. The part-whole relation can refer to a bodily dynamism within the whole body, and it can further refer to the body within the whole person; it can refer to a person within a relation of persons; it can also refer to a particular sexual act in relation to a lifetime of such acts, and these again in relation to the whole of marriage. Callahan and Cahill, both married women, insist that the proper starting point must be that whole which is the partnership of the married couple; the starting point is not the nature of one genital act. For Callahan, "No 'act analysis' of one procreative period of time in a marriage can do justice to the fact that the reproductive couple exists as a unity within a family extended in time and kinship."¹⁴⁴ This understanding of totality was rejected by Paul VI in "*Humanae vitae*," but his position has not persuaded all.

Both sides of the argument usually admit that something is missing in the recourse to artificial techniques. The Instruction argues that artificial reproduction is "procreation deprived of its proper perfection." Vespieren asks a crucial question: "Can one conclude from the existence of a *deficiency* to the illicitness of the use of techniques of artificial procreation?"¹⁴⁵ Obviously, the answer depends on which ethical methodology one uses. For one system imperfections (in the sexual act) are huge stop signs; for other systems they are dangers to be cautiously and carefully reckoned with.

2) *Experience*. A number of commentators have claimed that the Instruction "substitutes assertions for nuanced arguments about what really constitutes respect for human 'nature,' 'dignity' and 'rights.'"¹⁴⁶ The document gains much of its rhetorical force by claiming so insistently that a particular act is wrong because it violates "human dignity." Its critics, equally devoted to human dignity, argue that one must give

¹⁴³ "Vatican Document: Suggestions" 26.

¹⁴⁴ "Lovemaking" 236.

¹⁴⁵ "Les fécondations" 613. McCormick adds: "Is an act 'deprived of its proper perfection' necessarily morally wrong? If the Catholic tradition is our guide, the answer is no. There are many actions less than perfect, actions that contain positive disvalues that we regard as morally permissible in the circumstances. Indeed, the congregation itself, in allowing medical interventions that seek 'to assist the conjugal act,' allows for interferences that constitute something less than the perfect" ("Vatican Document: Responses" 247-48). Similarly, Helmut Kaiser, ed., "Kommentar zu medizinisch-ethischen Richtlinien für die in-vitro-Fertilisation (IVF) und den Embryotransfer (ET)," *Zeitschrift für evangelische Ethik* 30 (1986) 270-95, at 288.

¹⁴⁶ Cahill, "Vatican Document" 246.

reasons why a particular act offends human dignity.

Many authors call for a greater use of experience in reflecting on these issues. What the call of the critics means, I think, is that the complexities of a marriage as well as the outcomes of medical intervention must be considered, and not just an analysis of certain parts of an act. Thus, Callahan appeals to genetic, psychological, and sociological considerations to establish why the family is violated by the intrusion of a third party, but not by homologous IVF or AI.¹⁴⁷ For the CDF, this appeal to a wide range of experience is not necessary since the Church has insight into the nature of sexual intercourse from which the CDF deduces that any deviation is wrong.¹⁴⁸

Some critics of artificial procreation quickly turn an infertile couple's "desire for a child" into a mere (selfish) wish. This seems strange, since the continuance of the human race has been in great part dependent on such desires. Furthermore, the basic tendencies of human nature are discovered through the experience of these "desires." As Shannon notes, "IVF serves what many consider an essential need: a child to complete their marriage."¹⁴⁹ Bernardin makes a similar point: "Marital intimacy, in turn, has a natural propensity, a desire, to be generative of life for the couple and also of new life."¹⁵⁰ Such a deep-seated desire or drive has been considered to be normally an essential part of being human: a "basic good."

There are dangers experienced in artificial reproduction. Desires can "become exclusively rational, purposively directed to the mechanisms of fertilization . . . 'the woman is on the way to being a machine of fertilization—the man is only a bearer of sperm. It leads to psychosomatic alienation of man and woman.'"¹⁵¹ The moral question is whether these psychological dangers should be prudently weighed by those considering

¹⁴⁷ "Lovemaking" 233-39.

¹⁴⁸ Just as the Pope has said that those who use artificial birth control are acting egoistically, so Ratzinger in a conference shortly after issuing the Instruction said that the use of IVF and ET is "egoistic" (McCormick, "Vatican Document: Responses" 247-48). The Vatican presumably does not claim to know the conscious attitude of those who use these modern means. These people often experience themselves to be both loving and generous. A plausible explanation for the Vatican's charges is that, since it is known in advance that the practices are immoral, their use is objectively egoistic, even if not subjectively so. If the desire to have one's own child is egoistic, then all parents are condemned.

¹⁴⁹ Thomas A. Shannon, "Test-Tube Babies," *New Catholic World* 230, no. 1378 (July-August 1987) 158-62, at 162; Franz Boeckle, "Die kunstliche Befruchtung beim Menschen," *Theologisch-praktische Quartalschrift* 135 (1987) 19-31, at 24.

¹⁵⁰ "Science" 24.

¹⁵¹ Prof. Peterson, cited in Boeckle, "Die kunstliche Befruchtung" 22-23. Curiously, the Church now opposes the kind of passionless procreation that once was proposed as the ideal.

artificial reproduction, or whether they in principle exclude such methods. Some surely will want to risk these psychological dangers rather than face childlessness. On the other hand, others foresee a different psychological effect: artificial reproduction "may liberate intercourse from frustrating preoccupation with vain attempts at procreation and allow it once again to unite the marriage partners in love."¹⁵²

3) *Tradition*. A few commentators have remarked that the Instruction notably does not appeal to a vision grounded in the Bible or in long-standing tradition. This deficiency is perhaps understandable, since many of the issues dealt with are rather new. It is also understandable since much of the biblical and postbiblical tradition has pointed in the opposite direction of the one taken by the Instruction. From the Old Testament to contemporary moral tracts, our tradition—most recently Pius XII—has argued that the "primary duty" of married couples is to procreate.¹⁵³

Vespieren properly argues that Vatican II so starkly refashioned the vision of marriage that the reservations concerning artificial reproduction by popes earlier in this century can and must be rethought. He also argues, however, that since "*Humanae vitae*" was devised for exactly the opposite purpose of the present Instruction, it is precarious to use its cardinal principles for a wholly different purpose. This point misses, I think, the inseparability thesis suggested in Vatican II and claimed, perhaps for the first time, in "*Humanae vitae*." The Instruction says its conclusions are "strictly dependent" on principles like the inseparability thesis: artificial reproduction wills the two meanings of sexual activity in separate acts, and thus transgresses this principle. The main question is whether this recent principle is absolutely valid.¹⁵⁴

II. Dignity of the Embryo

Given the strong and outspoken opposition of official Catholic teaching on the immorality of abortion, the basic claim of the Instruction concerning embryos probably provoked no surprise: "The human being must

¹⁵² William B. and Priscilla W. Neaves, "Moral Dimensions of *in vitro* Fertilization," *Perkins Journal* 39, no. 1 (1985) 10-23, at 13-14, 17; also Donald DeMarco, "Bioethics and Church Teaching," *Linacre Quarterly* 54, no. 3 (August 1987) 52-58, at 55; Macherel and Fauvel, "Stérilité" 621-25; Maguire, "Vatican" 14-15.

¹⁵³ Pius XII, in Odile M. Liebard, ed., *Official Catholic Teachings: Love and Sexuality* (Wilmington, N.C.: McGrath, 1978) 112-13. Also Leon Podles, "Catholics and the Flight from Fertility," and Joseph Farragher, "Questions Answered," *Homiletic and Pastoral Review* 87, no. 10 (July 1987) 60-66.

¹⁵⁴ Vespieren, "Les fécondations" 615; Richard McCormick raises four objections to the inseparability principle in "Document Is Unpersuasive," *Health Progress*, July-August 1987, 53-55. The Instruction's arguments are defended by A. Chapelle, S.J., "Pour lire 'Donum vitae,'" *Nouvelle revue théologique* 109 (1987) 481-508, at 494-501.

be respected—as a person—from the very first instant of his existence.” And this means “from the moment of conception.” Scientific findings are said to confirm this teaching.¹⁵⁵ The Church’s past teaching against procured abortion is cited as a basis for unconditional respect for the fetus. Prenatal diagnosis with openness to abortion is forbidden, as is all nontherapeutic research. Certain other practices such as cloning or the freezing of embryos are also judged to be illicit.

Questions may be raised, such as why freezing an embryo to preserve its life is condemned for endangering its life. Also, a growing number of ethicists are more hesitant about prenatal diagnosis than the CDF.¹⁵⁶ The Congregation seems to have looked only at the nature of the procedure and not at the probabilities of negative consequences. Some will object that the Instruction too severely restricts progress when it insists that, unless therapeutically required by a particular embryo, anything new always involves risk and therefore can never be justified. But the major questions in the literature have focused on the status of the embryo and on nontherapeutic research outside of the womb. We will look at each.

Bernardin, who championed the “seamless garment” position, set forth a remarkably tolerant position on the status of the embryo.

Each person is viewed as having an inestimable worth as well as a right to exist that cannot be directly attacked; indeed, it must be respected and protected. I suspect that no person of good will would deny this principle. However there is profound disagreement about the breadth and the manner of its application.¹⁵⁷

Noteworthy is that positions on the personhood of the fetus are a matter of “application,” not principle. As watchers of two recent major U.S. pastorals will note, considerably more disagreement is expectable in matters of application than in matters of principle. Bernardin’s own position, of course, emphatically insists that “all of the rights of being human must be afforded the zygote, embryo and fetus.” But he also recognizes that science does not simply offer confirmation, but also

¹⁵⁵ The Vatican does not say what this evidence is, and thereby avoids the countercharge that such scientific proofs usually involve a reductionistic materialism: e.g., to say that we are human because we have so many chromosomes. After welcoming the scientific confirmation, the Instruction then says that the scientific distinctions of zygote, pre-embryo, embryo, and fetus do not have ethical relevance.

¹⁵⁶ Edmund Santurri, “Prenatal Diagnosis: Some Moral Considerations,” *Questions about the Beginning of Life*, ed. Edward Schneider (Minneapolis: Augsburg, 1985) 120-50; cf. Hubert Doucet, “Génétique médicale, reproduction humaine et implications éthiques,” *Studies in Religion* 15 (1986) 43-54, at 49.

¹⁵⁷ “Science” 24.

disconfirmation, of the Church's official position.¹⁵⁸

To take but one bizarre question raised by present-day embryology: it can be asked whether natural intercourse is itself frequently immoral. It is now conjectured that only one in four or five fertilized eggs actually implant and later issue in a live birth.¹⁵⁹ Put abstractly, the moral question raised by these discoveries is the following. If one knows that in regularly performing a certain kind of act, approximately four or five persons will be killed every year, may one engage in that activity? As the bishops of England argued in another context, "the upright and informed conscience will not be willing to accept any substantial risk of killing the embryo, even as a side effect of pursuing some other choice. . . . A side effect is an effect not chosen either as end or as means, but merely foreseen and in that sense accepted. But it can be wrong to accept side effects, e.g., when to do so would be unjust to a third party such as, in the present context, the embryo."¹⁶⁰ If every conceptus is a person, then in regularly engaging in sexual intercourse a fertile couple do an action that normally will lead to the death of a number of innocent persons each year. Thus scientific research raises questions for the position that every conceptus be treated as a person.

The majority of major bioethical commissions in the world permit experimentation on the embryo outside of the womb up to 14 days of its existence. The English bishops denounced drawing the line here.¹⁶¹ The difference between the two positions is, as Krauthammer has noted, that "most people reject the notion that personhood begins at conception," while, in the words of Bernardin, "there is no way to distinguish the stages of the development of life that does not result in a type of relativism that would threaten the dignity and rights of all human life."¹⁶² The debate is familiar, and must here be left unexplored.

¹⁵⁸ As one author puts it, "To the microbiologists there is possibly 'only' a quantitative measurable difference between the appearance of the material substance of a man in comparison with that of other life forms" (Boeckle, "Die künstliche Befruchtung" 28).

¹⁵⁹ Cf. Neavec, "Moral Dimensions" 20-22. If someday the "efficiency" of IVF is better than natural intercourse, will there be a moral obligation to use IVF—again on the assumption that more persons would die using natural intercourse than with IVF?

¹⁶⁰ Joint Committee on Bioethical Issues of the Bishops of Great Britain and Ireland, "Use of the Morning-After Pill in Cases of Rape," *Origins* 16 (1986) 237-38, at 238.

¹⁶¹ Walters, "Ethics" 8. The Warnock commission did so because only then does the biological "primitive streak" that leads to an individual person begin to form: Mary Warnock, "Do Human Cells Have Rights?" *Bioethics* 1, no. 1 (1987) 1-14, at 10-11. See also George Basil Hume, "The Ethics of Experiments on Human Embryos," *Origins* 14 (1984) 145-47; Joint Committee of Bishops' Conferences of England, Wales, and Scotland, "Legislation/Infertility Services," *Origins* 17 (1987) 144-47.

¹⁶² Krauthammer, "Ethics" 18; Bernardin, "Science" 24; cf. Peter Byrnes, "The Moral Status of the Embryo," *Nederlands theologisch Tijdschrift* 41 (1987) 137-51; Martin Ho-

III. Heterologous Reproduction

Bernardin nicely captures the next area of the Instruction's concern: "The second principle is the essential and necessary relationship between human sexuality, marriage and parenthood."¹⁶³ Using this principle, Bernardin speaks against surrogate parenting, AID, heterologous IVF, cloning, and parthenogenesis.

Few ethicists have spoken in favor of the latter two (which are not yet technically possible). And just about no ethicist is happy with paid surrogacy. Only a few have countenanced altruistic or intrafamilial surrogacy.¹⁶⁴ Thus, whether the surrogate offers her egg and gestating powers, or only the latter, surrogacy seems to many ethicists highly suspect. And this is so despite the fact that, by one count, 495 out of 500 of the first cases turned out "satisfactorily," vague as that criterion is. In practices like this, a natural-law ethic that highlights at least prima-facie obligatory "essential connections" stands in sharpest contrast to forms of ethics which look only to successful results.

The bishops of Florida provide an extensive list of problems with surrogacy, especially commercial surrogacy.

Surrogate parenting violates the marriage covenant; dehumanizes the procreative process; exploits women, particularly those who take money for the use of their bodies; treats the child as a commodity to be delivered for the payment of a price; ignores the reality of the surrogate mother's psychological and emotional attachment to her child; subverts the child's relationship with his or her mother; disguises the child's ancestry; ignores the experience in today's society of the attempts of adoptive children to locate genetic parents; and disregards the stress upon the marriage.¹⁶⁵

There are at least three major foci: the child; the third party, who may be the semen or egg donor or the gestational mother; and the family. Two collateral concerns are the "right to a family" and adoption.

A. Child's Dignity and Well-Being

For many ethicists, the well-being of the child should be the first concern in making a decision. The New Jersey Catholic bishops defend

necker, "Genetische Eingriffe und Reproduktionsmedizin aus der Sicht theologischer Anthropologie," *Zeitschrift für Theologie und Kirche* 84 (1987) 118-36, at 121-22.

¹⁶³ "Science" 24.

¹⁶⁴ E.g., Michael Novak, "Buying and Selling Babies: Limitations on the Marketplace," *Commonweal* 114 (1987) 406-7. Commentators rightly insist that "surrogate motherhood" is a misleading term, but it has become common; cf. Robert Barnett, "Surrogate Parenting: Social, Legal and Ethical Implications," *Linacre Quarterly* 54, no. 3 (1987) 28-38, at 29 f.

¹⁶⁵ Bishops of Florida, "Legislature Asked to Outlaw Surrogate-Parenting Contracts," *Origins* 17 (1987) 132.

the child's dignity: "the natural mother . . . is exploiting the most precious thing she can bring into existence, her own child. . . . In surrogacy a child is conceived precisely in order to be abandoned to others and his or her best interests are the last factors to be considered."¹⁶⁶

The "essential connections" between sexuality, marriage, and parenthood loom large in surrogacy. If the material conditions for the child's well-being were the only factors and if parent-child relations counted for nothing, then many children would do better in another family. Obviously, there is something wrong with this kind of evaluation. Only great necessity can override the importance to the child of the parent-child relation. Even though there is presently no evidence of any special harm or benefit to the child, still, for this decade or more, we are engaged in an experiment which includes children without their consent.¹⁶⁷

B. The Third Party

The issue of the donor's responsibility is raised by Callahan: "encouraging persons to give, or worse, to sell their genetic or gestational capacity attacks a basic foundation of morality—that is, taking responsibility for the consequences of one's action. . . . western culture has insisted that men and women be held accountable for their contribution to the creating of new life."¹⁶⁸ Most agree that surrogacy carries more responsibility than sperm donation. A mother carrying a child develops an intimate relationship with the growing fetus; a sperm donor does not. As a consequence, questions have been raised about what kind of virtue is socially encouraged or required in a woman who would give up her own baby voluntarily at birth. One must also be concerned about the impact on the donor's spouse and their other children.¹⁶⁹

¹⁶⁶ "In the Case of Baby M," *Origins* 17 (1987) 158-64, at 162. George Annas, who has followed the Baby M case with intense interest and whose writings have significantly influenced episcopal statements, writes: "there is no reasonable doubt that what is being paid for is a child, not an egg, gestation, and childbirth 'services.'" Even though other parties got paid early on for their services, Mary Beth Whitehead was to receive her full payment only on handing over a healthy baby. Cf. "Baby M: Babies (and Justice) for Sale," *Hastings Center Report* 17, no. 3 (June 1987) 13-16, at 14; also cf. Barbara Katz Rothman, "Surrogacy: A Question of Values," *Conscience* 8, no. 3 (1987) 1-4.

¹⁶⁷ Peter J. Riga, "The Vatican Instruction on Human Life," *Linacre Quarterly* 54, no. 3 (August 1987) 16-21, at 18; Mary Warnock, "The Good of the Child," *Bioethics* 1, no. 3 (1987) 141-55, at 149; Boeckle, "Die künstliche Befruchtung" 22-23; Callahan, "Lovemaking" 237.

¹⁶⁸ *Ibid.* 238.

¹⁶⁹ Gordon, "Baby M" 26; New Jersey Catholic Conference, "In the Case of Baby M" 158-64; John Garvey, "Contracting Anguish," *Commonweal* 114 (1987) 232; Callahan, "Lovemaking" 238.

C. Marriage

It surely would seem that the suffering of two people is worse than the suffering of one. That sort of calculative logic works with individuals. But in marriage, matters are not so easy. For a couple as couple to share a common fate of being adoptive parents or childlessness may be better than for them to follow separate fertility paths. A marriage is a relation of spouses. It is this relation that is fractured by heterologous reproduction. Marriage is a life shared, for better and for worse.

To be sure, fractures are not complete breaks. In the complexities of life—and marriage is a most complex relation—there are exceptions, e.g. a widow may bring children into a second marriage. Few would argue that such marriages ought never take place. Common experience of troubles in such blended families, however, indicates that this is an imperfect situation. There is inequality where there should be equality. Such deficiencies need to be prudentially considered before being permitted as part of marriage. As Callahan notes,

In the average situation, two parents with equal genetic investment in the child are unified by their mutual relationships to their child. They are irreversibly connected and made kin through the biological child they have procreated. . . . With third-party genetic or gestational donors, however, the exclusive marital unity and equal biological bond is divided. . . . consent, even if truly informed and uncoerced, can hardly equalize the imbalance. . . . Fertility and reproduction have been given an overriding priority in the couple's life.¹⁷⁰

For Callahan, as we have seen, the "couple's life," not procreation, should be foundational and primary. To be sure, with adoption neither partner has the deep satisfaction of being a biological parent. This is a loss. But they share adoptive parenthood. Heterologous reproduction presents a serious threat to the spousal relationship.

Still, this does not decisively prove that heterologous reproduction is always wrong. It is the experience of IVF clinics that many people would adopt; they want to be parents, want that even more than they want to bear their own children. But they cannot adopt.¹⁷¹ That heterologous reproduction is not a good solution does not make it self-evident that it is not a morally good solution. As Krauthammer notes, "the transfer of ova and sperm to and from third parties does produce distorted families. But these distorted families are produced in situations in which there otherwise would be no families."¹⁷² The moral ambiguity here is whether

¹⁷⁰ "Lovemaking" 237.

¹⁷¹ Suzanne Uniacke, "In Vitro Fertilization and the Right to Reproduce," *Bioethics* 1 (1987) 241-54, at 243.

¹⁷² "Ethics" 20.

a "distorted family" is preferable to a marriage without family. And this question will continue to vex our society until more evidence has accrued, which—right or wrong—in our permissive society undoubtedly will happen.

D. New Rights?

The Instruction speaks of a right to be conceived in and from marriage. Doerflinger argues on behalf of the American bishops that a child has a right to an integral family. Similarly, the bishops of the U.K. speak of "the right of children to be born the true child of a married couple." The grounding of a "right to true parents" or to a "true family" has rarely been attempted, and it is not immediately evident.¹⁷³ It is at least a peculiar right, since someone who would exercise this right would never exist and thus never be able to exercise the right.¹⁷⁴

There is also much discussion about whether a married couple have a "right to a child."¹⁷⁵ The Instruction seems to win too easily its case against a right to a child by taking it to imply that the child is a thing which parents might own. This is one technical meaning of the words "right to a child"; in ordinary parlance we often say that married couples have a right to have children. The Church has long insisted that marriage is for children; and while the Church has modified that position somewhat, it seems strange that now the Instruction should appear to overlook the strong connection between marriage and children. There is at least a negative right not to be interfered with, i.e., the right of couples to try to procreate.¹⁷⁶ In speaking against a right to procreate a child through artificial means, the Instruction limits this right.

E. Adoption

A popular reaction to the Instruction was to wonder why it forbade adoption. There is some, presumably unintended, basis in the text for this reaction. The Instruction condemns the "rupture between genetic parenthood, gestational parenthood and responsibility for upbringing." Since the Instruction says that *any* rupture between the first and second is immoral, it seemed to some that adoption, which ruptures the third from the others, must also be immoral. If not, the impression is given

¹⁷³ Richard Doerflinger, "Public Policy and Reproductive Technology," *Origins* 17 (1987) 143-44; Bishops' Conferences of England, Wales, and Scotland, "Legislation" 147; New Jersey Catholic Conference, "In the Case of Baby M" 162.

¹⁷⁴ Riga, "Vatican Instruction" 18; Krauthammer, "Ethics" 19.

¹⁷⁵ For a lengthy, though not wholly satisfying account, see Suzanne Uniacke, "In Vitro" 241-54; also Bruguès, "La F.I.V.E.T.E." 80; Warnock, "Good of the Child" 143-45.

¹⁷⁶ Robert Barnet, "Surrogate Parenting: Social, Legal and Ethical Implications," *Linacre Quarterly* 54, no. 3 (August 1987) 28-38, at 35.

that the essential connections involved in conceiving and bearing a child are more inviolable than the connection between begetting and rearing one's own child. Almost all persons admit that *in extremis* a child can be put up for adoption. Heroic virtue can be required to adopt someone else's child. Adoption "is to proclaim that every infant has a right to a family."¹⁷⁷

The analogy of adoption has been either rejected or used in justifying heterologous reproduction. In order to reject donor methods of reproduction, Cahill points out that adoption "is a morally admirable measure to remedy originally undesirable circumstances that come into being against human choice rather than because of it. It is morally different from the deliberate creation of a child for whom its parent(s) has (have) no intention of assuming personal responsibility."¹⁷⁸ She surely makes an important point. Making the best out of a bad situation is different from making a bad situation. By contrast, in order to defend AID, Krauthammer makes a different point: "in adoption there is no genetic connection whatsoever between the child and the parents, and that in no way invalidates the notion of family. . . . It may not be the ideal family, but it is the best that people can do. For infertile couples, the best they can do may involve having a third party participate in the creation of a child."¹⁷⁹ It may be that adoption does not perfectly fit the "nature" of a family, but it seems true to say with Krauthammer that adoption helps form a family.

Doerflinger rejects adoption as a legitimating analogy for heterologous reproduction. He claims that adoption does not divide or redefine families.¹⁸⁰ The first claim seems empirically false, since some adoptions do divide families. In the sense of the essential connections cited by the Instruction, adoptions also redefine families; but in the sense that Krauthammer and most of us give to the family, adoptions do not. This larger sense of family is just what makes donor reproduction not a clear violation of the nature of the family. In other words, the legitimacy of adoption shows that the "essential connection" of procreating and parenting ought not to be made too rigid. The child has a right to "a" family, even if sometimes this must be a less than perfectly natural family. But the connection also ought not be too loose; with Callahan, the nature of marriage ought to be respected, and with Cahill, it is normally unconscionable to beget a child that one intends to abandon.

¹⁷⁷ Macherel and Fauvel, "Stérilité" 624.

¹⁷⁸ "Vatican Instruction" 246; cf. also Barnet, "Surrogate Parenting" 28-38; Warnock, "Good of the Child" 143-44.

¹⁷⁹ "Ethics" 19.

¹⁸⁰ "Public Policy" 143-44.

IV. Homologous Fertilization

Bernardin notes that for most people the two principles behind protection for the embryo and behind restricting procreation within a family are matters of common sense. People are at least "very uncomfortable" with any exceptions. Not so with the third principle he sees guiding the Instruction: "This principle speaks of the nature of marital intercourse. . . . the act of intercourse which celebrates and incarnates the meaning of marriage also has two purposes: lovemaking and life making. . . . they cannot be separated in marital intercourse."¹⁸¹ Here there is disagreement not only over some applications but over the inseparability principle itself—and not by a few but by many, including Catholics. Most of the Christian ethicists and ethical committees surveyed for these "Notes" either have no moral problems whatsoever with homologous artificial reproduction or approve it with qualifications. Concerning the rejection of AIH, the archbishop of Rennes, France, acknowledges: "As a matter of fact, it is not easy to understand." And he makes no attempt to make it understandable. Other European bishops issued statements that try to downplay the prohibition of homologous reproduction by noting that even for the Instruction these methods are less ethically weighty.¹⁸²

Bernardin knows that he has a loser in the present public forum. Still, he sets out to defend this principle. He acknowledges the most common criticisms:

Some argue that the church is being inconsistent when, on the one hand, it says that marriage is ordered toward the creation of new life and then, on the other hand, opposes the use of scientific technology to allow a loving but infertile couple to conceive. Similarly, some argue that this is a narrow biological or "act-centered" approach which fails to take into account the total context of marital love. They ask what is wrong with using human intelligence to assist the natural process of marital life making.¹⁸³

Bernardin does not try to refute these objections. Rather, he asks three questions which he thinks will show that homologous artificial reproduction is not permissible.

1) *Uniqueness of Sexual Activity*. The Instruction insists on a distinction between human and animal sexual activity. While that distinction

¹⁸¹ "Science" 25.

¹⁸² Jacques Jullien, "Bioethics: Paradise Lost?"; Karl Lehmann, "Observations on the Interpretation of the *Instruction*"; Godfried Danneels, "Humanity's Survival at Stake": all in *Health Progress*, July-August 1987, 59-61, at 60; 61-62, at 62; 64-65, at 65; Riga, "Vatican Instruction" 19. For a splendid account of 19 separate objections that have been raised against IVF and for generally prudent answers to these objections, see Neaves, "Moral Dimensions" 10-23.

¹⁸³ "Science" 25.

is valid, it is a distinction that proves too much or too little. All human activity is different from the activity of other kinds of animals. Unless the Instruction can show that sexual activity is singular among human actions, consistency requires that medical technology be proscribed from all human acts or from none.

Bernardin tries to meet this problem by asking whether there is "a qualitative difference between the creation of life and other human activities." He thinks there is. That claim, I imagine, raises the usual lament: Why is sexual activity set in a special category outside normal ways of understanding human activity and exempt from usual ways of doing ethics?¹⁸⁴ Is this not yet another form of a Catholic preoccupation with sex? Remarks about celibates making the sexual rules are usually irrelevant, but the suspicion lurks that celibates isolate and overvalue not only the sexual life but also individual sexual acts. Obviously, sexual activity is unlike any other act, but so also are worship, eating, or flying. The nature of each of these acts, not just of sexual activity, "places limits or constraints on what might be technologically or scientifically possible." The question returns: How decide those limits?

The typical logic of the Vatican's sexual ethics, it seems to me, is to state the ideal and then to insist that anything wilfully short of the ideal is sinful. It slides from "best way" to "only way." That is, in intention sexual activity must be structurally perfect, or else it must not be. For the Instruction, the ideal and therefore only way for the child to be conceived is as a result of a loving genital act; hence reproductive technologies are wrong.

2) *Family*. Bernardin's second question cuts deeper: "What are the consequences for the human family if we are to replace the ecstatic union of two bodies becoming one-in-love as the source of life with the technology of artificial insemination or in vitro fertilization?" Deductively, one might give an answer; but empirically, no one knows the answer to this. Here is where we have to act cautiously, prudently, and watch the evidence. As Novak comments, "The 'laws of nature and of nature's God' slowly make themselves known to us through experience and misadventure; thus does nature instruct us in history."¹⁸⁵

Bernardin's second question is an utterly important one and needs answers on two levels. Strictures against violating natures (family, marriage, sexual intercourse) often seem misplaced on the level of this or that couple or act. In fact, they may even lead to incomplete families or hellish marriages or frustrated sexual activity. But they may make eminent sense as social-ethical positions. Divorce is a current example.

¹⁸⁴ Neaves, "Moral Dimensions" 13.

¹⁸⁵ Novak, "Buying" 406-7.

A given way of saving or creating an individual family might establish a moral practice that would weaken all families. Hence Bernardin's question needs to be answered on the level of the individual family and the common good.

Some argue that the effects on a particular family or on the human family will not be all that severe. Others see a return of "the ancient error of Manicheanism in the white garb of biological and genetic scientists."¹⁸⁶ Callahan favors an intermediate position. She approves of various homologous techniques, but only where these will restore what would otherwise happen naturally. Thus her complexly worded norm: "It is ethically appropriate to use alternative reproductive technologies if, and only if, such technologies are making it possible for a normal, socially adequate, heterosexual married couple to have a child as they would, or could, if their infertility were not an obstacle."¹⁸⁷

3) *Pandora's Box*. Bernardin's third question is one that bothers most bioethics committees and ethicists: "if we remove the creation of life from the mystery and unpredictability of interpersonal marital communion and make it the prerogative of scientific planning, are there any restraints on other applications?"¹⁸⁸ Should we allow a process to start that could lead to a "pick and choose" procreation and eventually be used to design human beings?

Bernardin argues that the creation of a child is like few other human endeavors. He adds the theological point that in procreation we are coresponsible with the Creator. From this he concludes that there are limits. Once again, however, we should be careful not to make sexual reproduction wholly unlike other human activities. We are coresponsible with God in every deed we perform, but no automatic set of limits flows from that participation. Hence Bernardin's argument does not seem wholly persuasive. Others frequently assert we must set limits because the child is a gift of God. Still, the whole of creation is a gift of God. Gift and coresponsibility language, important as it is for the foundation of ethics, is relatively useless when it comes to deciding about particular acts. Depending on one's doctrine of creation, these terms can be used expansively or restrictively.¹⁸⁹

4) *Artificial Assistance*. We will have to await clarification from the Vatican on what kinds of medical interventions are permitted. A marital sexual act done with love is required. To some this implies two spatial

¹⁸⁶ Riga, "Vatican Instruction" 21; Warnock, "Good of the Child" 149.

¹⁸⁷ "Lovemaking" 235.

¹⁸⁸ "Science" 25; cf. Walters, "Ethics" 5; Shannon, "Test-Tube Babies" 158-62; Neaves, "Moral Dimensions" 18.

¹⁸⁹ Honecker, "Genetische Eingriffe" 119.

criteria: the sperm must be ejaculated in the vagina, and fertilization must take place in the body of the woman. Clarification will be needed on whether the Instruction permits ova to be medically removed, on whether the sperm can be drawn from the vagina *post coitum*, and on whether the sperm and ovum can then be inserted in the womb or in a fallopian tube.¹⁹⁰ To many these questions seem to be a matter of technicalities, and they lead to what has been called "moral nit-picking." The impression is given of trying to find loopholes in the rules rather than facing the need to rethink the principles.

Still everyone agrees on the goals, and it is the role of moral theologians to debate the "how's." At this point, the Instruction sees distinctions that constitute the difference between wrongness and rightness, while its critics see difficulties that call for prudence. To one group, these distinctions point to the will of God inscribed into human nature; to the other, they seem like the fixations of a mistaken methodology and a misunderstanding of integral human life. There is no question of the moral earnestness of either group. There is question of moral wisdom.

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THE CHRISTIAN DIFFERENCE IN ETHICS

In their recent pastoral letters *The Challenge of Peace* and *Economic Justice for All*, the U.S. Catholic bishops set out to instruct the community of American Catholics and to contribute to the general public debate about morally significant policies. Thus, in *Economic Justice for All* the bishops speak of their desire "to provide guidance for members of our own church as they seek to form their consciences about economic matters" and of "the common bond of humanity that links all persons" and that is "the source of our belief that the country can attain a renewed

¹⁹⁰ It has been suggested that the document was written in such a way as to permit Gamete Intra-Fallopian Transfer (GIFT) and Low Tubal Ovum Transfer (LTOT). GIFT involves extracting an ovum by surgery, placing it in a catheter along with sperm which may be obtained by use of a perforated condom. These are kept separated by a bubble lest the sin of IVF be incurred. Then both sperm and ovum are injected into a fallopian tube in such a way that they meet one another only in the body. LTOT takes a surgically obtained ovum and places it beyond any obstruction in the fallopian tubes, where it may then be fertilized in normal intercourse. Both are said to be free of sin since sexual intercourse takes place in the normal fashion and actual conception takes place in the woman's body. The fact that doctors and nurses have to be involved is taken to be assistance, not replacement. Still, since there is considerable technical intervention between the sexual act and fecundation, it has been suggested that these methods really should be proscribed. The Instruction holds that no one "may subject the coming of a child into the world to conditions of technical efficiency" (Nientiedt, "Natur nachhelfen" 218).