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# Humanum

Issues in Family, Culture & Science



HEALTH AND MEDICINE

## Re-Conceiving the Human Person: the

# A.R.T. of Reproduction



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### Re-Conceiving the Human Person: the A.R.T. of Reproduction

Assisted Reproductive Technologies (ARTs) provoke fundamental questions which cannot be suppressed...questions about human identity and human origins, about motherhood and fatherhood, about the human body and human nature itself. ARTs will have an enormous impact on the future shape of society, on whether and to what extent our children's children live under some sort of technological totalitarianism. In this issue we take up these momentous questions, by presenting the papers from the CCPR's 2014 conference: "The ART of Reproduction: Re-Conceiving the Human Person."

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# Humanum

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## EDITORIAL

### The A.R.T. of Reproduction: Reconceiving the Human Person

MICHAEL HANBY

Our culture has apparently made its peace with Assisted Reproductive Technologies (ARTs), which are now responsible for the births of some 4 million children worldwide. This peace is premised upon the assumption that these technologies raise no fundamental questions about the meaning of the human being, that how we are conceived and by whom are accidental matters with no great consequence for the meaning for personal identity or for human flourishing.

One indication that this premise is a lie is the fact that the subject of ARTs is so difficult to talk about. Type ‘what to tell children born of In Vitro Fertilization (IVF)’ into google and you enter into a sad world of anxiety, shame, and bewilderment. The questions multiply exponentially and become all the more unanswerable the further one moves from natural marriage and natural procreation. What do you tell a child who was ‘frozen’ in cryopreservation, so that his ‘twin,’ who is now two years older than he, could be born first? How do you tell a child that she was the lucky one who was ‘selected’ for her healthy genetic profile or her gender from among her five embryonic siblings? How do you say to the child of two women, who legally speaking, does not have a father, that his father was a donor? What do you say to the child whose mother, in the words of the film *Breeders* featured in this issue, was a ‘breeder’?

Such questions are unanswerable because they are almost unimaginable, a frightening indication that technology has increased our power to *act* well beyond our power to think and perhaps beyond our power to control. And yet most of us already inhabit this world in some form or fashion. We all know—and *love*—children conceived by these means. We all know friends and family who have taken recourse to ARTs in their desperation to have a child. Perhaps some reading may have done so. Whenever I write or speak about this topic—something I never really set out to do and something which I do not enjoy—I always wonder whether I might be speaking to someone conceived through ARTs and whether they will perceive my remarks as cruel, or as questioning their humanity.

I want to introduce this issue, therefore, by saying two things that *should* go without saying. First, if as the Catholic faith teaches, the human person is a child and a child is a gift—not just in its origins but in its very ontological structure—then no human act, no human intervention

in the genesis of the child, can erase this fundamental gift character. So a child conceived through IVF or ICSI is no less human, no less a child, no less a *gift*—and thus no less worthy of his life or worthy of love—than a child conceived through procreation. Nor should we doubt that parents who resort to ARTs love their children. Indeed, their willingness to submit themselves to the great expense, anxiety, and indignity of IVF can even be seen as a sign of their willingness to sacrifice and suffer on the child's behalf. Secondly, the desire of a couple for a child is a good and natural thing, and the anguish and desperation of infertility which often drives people to ARTs is a great burden to suffer. However critical we may be of ARTs, we cannot forget the terrible suffering that makes them such a temptation.

All of this suffering—and there is plenty of it to go around whether this technology succeeds or fails—creates an enormous inducement *not to think* deeply about the meaning of ARTs, to accept the 'gentlemen's agreement' of silence that undergirds this peace. This settlement is tempting, considering how close this cuts to human identity and to so much that we hold dear, but it is nevertheless a bargain we can ill afford. For in saying yes to ARTs, our culture has said yes to much more than it originally bargained for. ARTs have given us a world in which it is now normal for thousands upon thousands of so-called 'spare embryos' to be frozen away in cryopreservation, awaiting a tenuous fate. ARTs are the *sine qua non* for embryonic stem cell research, germline manipulation, and a host of other brave new eugenical fantasies dreamed up, not just in semi-private bio-tech ventures such as the J. Craig Venter Institute, but in leading universities such as Harvard, Princeton, and UCLA. ARTs are the condition of possibility for the invention of same sex marriage and for contemporary efforts to redefine the family independent of sex, gender, and marriage—which will make it all but impossible to regulate the 'wild west' that is the present fertility industry, will catalyze new agendas for research, and create markets for new bioengineered 'products' that would otherwise be unthinkable and unnecessary. And the decoupling of sex and procreation has given rise to a surrogacy industry that often leads to a legal quagmire domestically and to the exploitation and virtual servitude of poor women abroad. Of course, all of this will have an enormous impact effect on the future shape of society, on whether and to what extent our children's children live under some sort of technological totalitarianism. And it will undoubtedly have—and is *already* having—a profoundly *existential* effect for those conceived by these means and under these new arrangements.

ARTS thus provoke fundamental questions—questions about human identity and human origins, questions about motherhood and fatherhood, and questions about the human body and human nature itself—which cannot be suppressed. And the fact that this technology implicates us in matters of such profundity compels us to consider two further questions that go well beyond the usual moral question of the use or misuse of this technology: first, whether in saying 'yes' to ARTs our culture has already decided these questions, and decided them in favor of a new, unprecedented, and ultimately post-human vision of human nature, and second, whether at the heart of this technology and this view of life there is a violence that harms those who succeed by it as well as those who fail by it, and that contradicts the love that we have for our children.

There are many vantage points from which to pose questions this vast, a number of which will emerge in the course of the essays in this issue of *Humanum* (which this time offers the contributions from the CCPR's April 2014 conference). We may ask these questions as a matter of philosophical anthropology, or from the view of medical and biological science. We may consider them in conjunction with the rise of same sex marriage and new definitions of family that are rapidly acquiring the force of law. We may ask these questions from the point of view of the burden and expectations which this technology places on women. And we may consider these questions from perspectives too often ignored or even silenced, the perspectives of the

children conceived through these technologies and the women, such as surrogates, who are exploited by them. We hope that in asking these questions, we will come to a deeper understanding of the *humanum*.



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## FEATURE ARTICLE

### Life As A Lab Specimen

ALANA NEWMAN

I found my way to Catholicism because it is the only major organization that is getting the conversation on new reproductive technologies *right*. I hope my testimonial will give others the courage to defend Catholic teaching—indeed to defend humanity itself.

*On the 28th of June 1978, a little more than a month before he died Pope Paul VI said, ‘You will thank God and me for Humanae Vitae.’ Now after 46 years, we see what has happened to the institution of marriage and we realize how prophetic that document truly was. Losing the unbreakable bond between conjugal sexuality and procreation, which denies the core teaching of Humanae Vitae, has paved the way for its reverse, that is, separating procreation from conjugal sexuality: from sex without babies to babies without sex. We have lost sight of the fact that human procreation is rooted in conjugal love, and have gradually constructed an ideology according to which anyone can have a child: single men or women, homosexuals often using surrogate mothers. In this way we have passed from an attitude that waited upon a child as a gift to an attitude that plans or programs a child as if that child were a right. One thinks of the recent court ruling in Milan that affirmed the ‘right’ to parenthood, that is, it affirmed the right of one human person to possess another!*

—Cardinal Carlo Caffarra, Archbishop of Bologna

I want to empower you to proclaim that every person deserves to be conceived in an act of love, with their married mother and father—not forcefully separated from their natural families and cultural heritage, often, where money is involved, as objects, accessories, or prizes.

I remember the first time I struggled to understand the ethics of a case involving reproductive technologies. I was five years old, folding clothes in my bedroom with my mom. She told me that my dad was not my biological father. My biological father was an anonymous sperm donor about whom we knew nothing and whom we could not locate. I was told I was very loved and wanted, and that this is just simply what infertile couples must do. We were different, but we never did anything “wrong,” so to speak.

A few years later my mom divorced that “dad” and I never saw him again. She remarried, and so I was quickly and suddenly given a new “dad.” But neither the first nor the second man ever

made me feel safe in my own home. I grew up thinking that there was just something inherently evil and suspicious about men. I truly thought they were either all incapable of love, or that there was something disordered with *me*; I was simply not worthy of love.

I got older and started spending more time with friends and seeing how their dads treated them. I realized that there are actually great dads out there. But the number one predictor of child abuse is a child living with a non-genetically-related guardian, especially a non-genetically-related male. I have an older sister who was adopted. I also have a younger half-brother who was conceived naturally with my mom's second husband. This unique vantage point taught me the importance biology plays in a parent-child relationship.

Children are fifty times more likely to die in the care of a non-genetically-related guardian. This phenomenon is called the "Cinderella Effect," and is verified again and again and in country after country through social science research. Discovering this, I realized I had to speak out against third party reproduction. Especially because, unlike in adoption, there are absolutely no home studies or merit barriers filtering intended parents.

If a biological connection matters for the safety of children, why is there a multi-billion dollar industry with fertility industry agents *promoting* and profiting from children being separated from at least one half, and, often enough, both natural parents?

There are many consequences of the use of third party reproduction, but safety was the issue that prompted me to get up and do something.

At 23, I started reaching out to the media. But sharing my story was very difficult. Any media success I've had has often been followed by very difficult phone calls home. For donor-conceived people who want to speak out against the practice, being honest may lead to being orphaned—or at least to a lot of unwanted conflict. That's why I started the *Anonymous Us Project*.

The *Anonymous Us Project* is an online story-collective that publishes insights and narratives from donor-conceived people, sperm and egg donors, intended parents and anyone else involved in the fertility industry or adoption. Our tagline is "*anonymity in donor-conception hides the truth, but anonymity in storytelling helps reveal it.*" We have hundreds of stories now and have published a book through University of Chicago Press.

The *Anonymous Us Project* has taught me this: We are seriously underestimating what kinds of consequences this will have on society. Growing up, donor-conception was sold to me as normal, even worth celebrating. The *unintended* lessons that accompanied that concept are alarming and worth noting. There was a time before my activism where I was enthusiastically in favor of commercial reproduction. After all I wouldn't exist without it. At 20, I sold my own eggs. And research has shown that donor-conceived people are 20 times more likely to sell their own sperm or eggs.[i]

But that's not the full story. Around the same time that I sold my eggs, I was also volunteering at NARAL (National Abortion and Reproductive Rights Action League) —fighting for the legality of partial birth abortion. After all, if it's okay to force a child into existence because it's so *wanted* then why is it not okay to force a child out of existence because it is *unwanted*? This was the circle of logic I couldn't help but live by. This was my values endowment.

This isn't just a conversation about the merit of choice in conception. If it's okay to buy and sell sperm, eggs, and wombs, then why is it *not* okay to sell other human tissues or organs? If it's okay to sell one's reproductive parts, why is it not okay to sell one's *sexual* parts, as in



prostitution? If it's okay to pre-sell and pre-order children via third party reproduction, what is so wrong with buying and selling children who are already born or conceived? It's naïve to assume decent people won't be very confused by analogy.

Most people I speak to have not given one moment's thought to the ethical merit of third party reproduction. We're all busy people; that's understandable. We throw peripheral concepts into binary piles of good, and bad, sometimes neutral. We've accepted adoption as a good. And adoption *can often* be good in that it is an institution that finds parents for helpless children that desperately need a decent home. But at some point our concept of adoption slid—and many people now think of it primarily as a way to get kids. We know that adoption means a severing of the relationship between biological parent and child. So if adoption is good, then the severing of that relationship must at least be neutral.

But it's not neutral, it's actually very sad.

So now I hear all the time: “Well, what's the problem with sperm and egg donation? Isn't it just like adoption?” And it's true, it has become like adoption in two ways. If adoption is seen more as a way of “getting” kids, then so too is sperm donation, etc. Secondly, third party reproduction severs the biological parent-child relationship.

But adoption is only ethical as an institution that provides caretakers for *existing* children who need competent parents. Sperm and egg donation and surrogacy are inherently unethical because they set up a *market* to manufacture children for adults that want them—practically *any* adult that wants them.

In an effort to assuage the suffering of infertile adults we've created a legal and explicit marketplace in children—the loophole being that if you sign the contracts and exchange the money before a specific child exists, then it's technically not baby-selling. We've allowed this for heterosexual couples who are clinically infertile, and, because it is a for profit industry eager to increase profits, we have now expanded the pool of clientele, even if a commissioning parent's only claim to infertility is that they have neither the interest nor ability to cooperate with a member of the opposite sex on a personal level.

We're now in a place where motherhood itself is being radically attacked. Women are reduced to “gestational carriers,” denied the dignity of the word “mother.” And people work hard at promoting and creating deliberately motherless children because they've discovered how much money they can generate.

This is where the culture is taking a big wrong turn:

When men and women cooperate, and we all step up to the plate to fulfill our obligations as mothers and fathers, husbands and wives, no one gets paid.

...Directly that is. The economic benefits of stable families are, in fact, huge.

For those that know and embrace this truth, the question remains—what do we do about real infertility? We all know someone whose life has been impacted by it.

The sperm count globally has decreased 50% in the last 50 years.[ii] The percentage of mammals being born *intersex* is increasing. Synthetic estrogens from plastics, pesticides and hormonal contraceptives have had a dramatic impact on our health by sabotaging the balance of hormones in a woman's womb, causing a variety of health problems for her baby, including improper sexual and reproductive development.

These chemicals affect both sexes, but, nowadays, women struggle in unique ways due to advanced maternal age and delayed childbearing, and also due to the fact that at least 25% of female factor infertility cases can be linked directly to an sexually-transmitted infection.

Infertility is thus caused by our toxic environment as well as our toxic behavior. To solve this crisis, we do not need a marketplace in children. What we need to do is clean up our toxic environment, and clean up our toxic behavior.

Much suffering would resolve if we would consume less and reserve our erotic orifices for our spouses.

I shouldn't oversimplify, but the solution does require a range of genius. Doctors, environmental scientists, social scientists, clergy and others all need to help us solve and prevent causes of infertility—whether due to our bodies or our behavior. We need to be taught how to love others properly and manage our relationships so that childbearing is possible within women's natural fertility window, and how to create a culture where women will have the support of their children's fathers, and not just via child support checks.

But we also need to learn how to grieve, and remind people we can't infringe upon others' rights when we attempt to alleviate our own suffering.

One round of IVF can cost \$8-10,000. One surrogate + egg donor pregnancy can cost up to \$300,000. We have the resources, the will and the intelligence to *actually* cure or prevent many forms of infertility. But we have to reject treating people like products.

I participated in a documentary where I engaged in a conversation with a gay man who had hired a surrogate to gestate twins, conceived with his little sister's eggs. I asked him what he and his partner would do if they discovered the twins had Down syndrome. The surrogate was 4.5 months pregnant at the time. He said, "We've talked about this and we would go ahead and abort."

On a forum I was reading several years ago there was a single mom by choice who had given birth to a son with severe learning disabilities. She asked, "Does anyone know if I can get a refund?"

Even though these processes create new life, please understand that they are not *pro* life.

Even though you hear again and again that these processes work to "make people happy", please understand that they do not in fact make people happy. They only delay or transfer pain.

I recently received a story on *AnonymousUs.org*—the author describes how she doesn't want to meet her father because:

Anyone who willingly degrades women to sexual objectification in pornography, willingly disowns the children he doesn't personally want, willingly impregnates multiple strangers, has these people raise his biological children, and never once in his life checks in to see if his kids are healthy, happy, alive, is not worth my time looking for.

And with that I want to end with a quote from a friend of mine, Mark Oshinskie:[iii]

Reproductive Technologies are like building one's dream home in Yosemite Valley: it pleases the consumer and their family and friends, but it costs the culture something far more precious and universal, namely the notion that life is sacred. Don't expect a world in which the

will of the sovereign consumer trumps all else to resemble the one in which your parents grew up, or to be a very good place to raise kids.

[i] [http://americanvalues.org/catalog/pdfs/Donor\\_FINAL...](http://americanvalues.org/catalog/pdfs/Donor_FINAL...)

[ii] [http://www.desireerover.nl/wp-content/uploads/OUR...](http://www.desireerover.nl/wp-content/uploads/OUR-...)

[iii] [http://www.lifeissues.net/writers/osh/osh\\_10onethi...](http://www.lifeissues.net/writers/osh/osh_10onethi...)

*Alana Newman is the founder of the Anonymous Us Project, an online story-collective for donor-conceived people and others involved with Third Party Reproduction. She has written and spoken extensively on the ethics and challenges of donor-conception and surrogacy.*



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## FEATURE ARTICLE

### Children of Desire: The Technological Control of Fertility

STEPHAN KAMPOWSKI

“Every child a wanted child” – this is the seemingly humanitarian slogan with which Margaret Sanger campaigned for legal contraception and abortion.[1] One might indeed be tempted to think that the best thing that could ever happen to children is to be conceived and born to parents who are ready for them, who are looking forward to their coming, and who have everything set in place for them. The worst thing, one might suppose, that could ever happen to children is to be conceived and born to parents who were not ready for them, who have space for them neither in their house nor in their hearts. Some one hundred years later we can say that Sanger’s “humanitarian” project has been a major success, at least as far as the power of conviction is concerned. In most places on planet earth today, people are convinced that the decision to have a child or not is a personal, private one, having no social dimension. The choice is of little interest to the larger family and ultimately is not even up to the couple but to the woman alone. “Every child a wanted child” means that every child should be conceived and born as the result of a deliberate decision on the part of the parents or at least of the mother. In other words, every child should be a programmed child. This logic, interiorized by most of our contemporaries, is made possible only with the advent of effective contraceptives and – in case these should fail – legal and hygienic abortion. I will argue that this is the logic that originally conceived artificial reproductive technologies and that makes it so hard for people to see how anything could be wrong with these.

What alternative attitude could one have with respect to giving birth to children? Until very recently what people deliberately chose was to get married, not having children. By choosing the married state, they also chose a mission at the service of their larger family and society: to pass on the name of their fathers and to renew society by giving it new members. In such context, having children was not an individual private decision but a mission that one assumed as part of a state of life.[2] This does not mean that children would come randomly without requiring the parents’ responsibility for their numbers. It only means that the object of a deliberate choice was not the *having* of children but the *not* having them. Until recently, what required justification was not why the couple should *have* children: this was justified by the mission they had assumed together with their state of life. What required justification was why the couple should *not* have children (i.e., economic hardship, poor health, or a full house). It was a question of the burden of proof in light of the question, “Why should we not have children?” For a couple not using contraception, the reasons for not having children will be the

reasons requiring them to change their sexual behavior.

With the widespread use of contraceptives, on the other hand, the burden of proof has shifted. Since the default behavior is to have sex without ever having to think of children being conceived, one has to change one's behavior in order to have children (e.g. by getting off the pill or setting aside the condom). This change in behavior then needs justification. The couple, or at least one member of the couple – usually the woman, starts to desire to have a child and modifies her behavior. As a result of this shift, children are no longer seen as the fruit of their parents' marital love, a love which made the parents choose the married state. Children are rather seen as the product of the explicit desire and deliberate will of their parents.

In his highly elucidating article "L'enfant du désir" ("The Child of Desire"), the French philosopher and sociologist Marcel Gauchet points out how this change of perspective amounts to a true anthropological revolution. In his essay, he never refers to Artificial Reproductive Technologies (ARTs), and yet the whole essay does nothing but describe their deepest logic. He writes,

The child is no longer the random fruit of sexuality, whose legitimate context is given by marriage. He or she is the result of an express desire, which is different from sexual desire and consciously directed at the conception of a being . . . One is no longer content to have a child; one makes a child, and there are only legitimate children inasmuch as they are legitimated by a desire to having them.[3]

ARTs are the most perfect expression of this new attitude, even if this attitude is not limited to ARTs. Thanks to contraception this attitude has become almost universal: today the child has become the result of a deliberate desire.

Given that today desire has become the foundation of rights, some already begin to claim a right to having a child, independent of whether they are married or not, whether they are in a relationship with another person or not, and whether they are in a relationship with a person of the opposite sex or not. By replacing nature with technology, ARTs allow all these people to have their desires and their "rights" fulfilled. Some may argue that indeed we are fortunate to live in our day and age, where people no longer come about by the chance contingencies of nature but by the deliberate programming of human reason.

And why should we insist on the sacredness and inviolability of nature? Doesn't nature herself make many mistakes? Isn't it precisely against nature that human persons have to affirm themselves? Isn't the whole point of the medical science to fix nature's mistakes and shortcomings? In what follows I argue that what is at stake is not so much the question of sacralizing nature, but rather the substitution of programming for contingency. The contingency of the human person's beginning is of crucial importance for his or her dignity. Indeed one can make the case that *our contingent beginning is the ground of our equality and that a being who is worthy of unconditional respect must never be brought into being conditionally* which is precisely the case when the principle origin of its coming to be is its parents' desires.

The Vatican Instruction *Donum vitae* makes this very claim: the substitution of the person's contingent beginning by technological dominion results in an unjust inequality between the parents and their children:

Homologous IVF and ET [embryo transfer] is brought about outside the bodies of the couple through actions of third parties whose competence and technical activity determine the success of the procedure. Such fertilization entrusts the life and identity of the embryo into the

power of doctors and biologists and establishes the domination of technology over the origin and destiny of the human person. Such a relationship of domination is in itself contrary to the dignity and equality that must be common to parents and children.[4]

But how exactly does this element of inequality enter the relationship between parents and children? Why is this technological domination contrary to “the dignity and equality that must be common to parents and children”? To see how artificial procreation is an act of injustice toward the children thus conceived, I will examine the parent-child relationship and argue that the question of whether children are conceived naturally or artificially makes a big difference for the very nature of this relationship.

To understand the difference in the parent-child relationship in the two cases, Robert Spaemann and Martin Rhonheimer, in two essays that proceed along the same lines, suggest looking at the difference in the way the child “results” from natural intercourse versus artificial procreation.[5] The child who is conceived during the conjugal act is the *fruit* of an act of love and comes to the parents as a *gift*. In the words of Gabriel Marcel, he or she “no more belongs to us than we do to ourselves.”[6] As Livio Melina puts it, the child is like “a guest who comes from afar,” whom one can welcome properly only when recognizing the “unexpected and gratuitous initiative of Another.”[7] The parents may in fact hope to conceive a child during the conjugal act, but, at least so long as the spouses choose to perform this act with the right attitude, it is always more than an act of human generation.[8] It is an act of spousal love that spouses would perform and could rightly perform knowing that they were sterile.[9] All that is required is that they do not deliberately hinder it from being fruitful. That is, they need an intentional openness to new life, but they do not always need to have the direct intention to procreate new life. In fact, if the act were to serve solely as a means to procreation and not also as the expression of spousal love, it would itself be disordered.[10] It remains meaningful even if there is no chance of pregnancy. As Rhonheimer concludes, “The conjugal act . . . is not truly a ‘means’ for reaching the goal of ‘a child.’”[11]

Children conceived by the loving union of their parents can thus consider themselves the *fruit* of their parents’ love, and not as their *product*. These children can say that they are because their parents loved each other.[12] Should they ever find themselves in an existential crisis, loathing their own lives, and ask their parents why they “made” them, these would not be obliged to give any account. As Spaemann puts it, the children came to be “while they were doing something else.”[13] And yes, maybe the parents were delighted at their coming to be, and maybe they were hoping for their coming to be, but what they were doing when they did come to be was not “producing another human being,” but rather performing an act of spousal love. These parents do not owe their children any existential account for their being, nor do the children owe their being to the causal volition of their parents. They are the fruit of their parents’ love, not the product of their making.

Things are different with artificial procreation. What is directly and exclusively intended in the act of artificial procreation is precisely the coming to be of a new human being. Here, the children could not possibly be thought of as the *fruit* of some other activity but they are precisely the exclusively intended *product* of the activity, namely, the procedures involved in artificial procreation. If attempts of *in vitro* fertilization and embryonic transfer repeatedly fail to achieve pregnancy, the woman will eventually stop submitting herself to this procedure. The procedure makes sense only insofar as it may lead to a pregnancy. A child conceived by means of this procedure is the product of a technological intervention, not the fruit of the mutual self-giving of the spouses. This is precisely the reason why *Donum vitae* calls this procedure illicit:

In reality, the origin of a human person is the result of an act of giving. The one conceived must be the fruit of his parents' love. He cannot be desired or conceived as the product of an intervention of medical or biological techniques; that would be equivalent to reducing him to an object of scientific technology.[14]

Now if a child born after artificial procreation were to ask his or her parents: "Why am I?" the response could not be, "Because we loved each other," but only, "Because we wanted you." The child's existence, as the product of a technological intervention, is dependent on his or her parents' will in an existential way.[15] To say it with Rhonheimer, "The 'goodness' of the new human life is made dependent, *in the act of the decision for IVF and in the acts that effect the procedure*, on its 'being desired.'"[16] The children born of artificial procreation exist only because their parents wanted them. Had they not wanted them, the parents would not have done what they did. This existential dependence on the will of other human beings, however, violates the fundamental equality of human beings. Such dependence is bearable in front of God, but not in front of other human beings.[17] When I see my life before God, I can say, "I am because I am loved; I am because God wanted and desired me to be." This is not only bearable but reassuring. We know that God does not make mistakes and that he does not change his mind. But before other people we do not want to say, "I am because you desired me." What if they were to cease desiring me? What if they were to say they made a mistake? What if I do not live up to their expectations? Gabriel Marcel warns us that fatherhood "degenerates as soon as it is subordinated to definitely specified purposes, such as the satisfaction of ambition through the medium of the child treated as a mere means to an end." [18] By the very logic of ART, the child is treated as a means to an end, namely the satisfaction of his or her parents' desire.

In fact, for Marcel Gauchet, "the desired child is also, by definition, the rejected child." [19] For him, "there will be many who will derive from this relation with their parents' desire an inextinguishable doubt, an irremediable uncertainty about themselves. Am I really the person that my parents desired? ... Am I really the one they were hoping I was going to be?" [20] Their parents' will to make them always contains within it an implicit expectation, and if it is only the vague expectation to fulfill someone else's desires. But we do not want our lives to be the function of this desire. We want to feel loved and desired for the very fact that we are and for whoever we happen to be. If children, conceived *in vitro*, one day were to ask their parents for the reasons of their perhaps miserable existence, their parents would in fact owe them an account, because these children came to be not only by the simple wish of their parents but by their will to have this wish come true at any cost. But human beings cannot give an account for the existence of other human beings.[21]

The very idea of human dignity means that human life is something to be respected unconditionally. We cannot give criteria for the justification of human life. Human life is precious because it is. If we had to give criteria for its justification—for instance, the parents' desire—we would make human life conditional on these criteria and hence violate its dignity, since having dignity precisely means being worthy of *unconditional* respect and recognition.[22] *A being that is worthy of unconditional respect therefore must not be forced into being as the product of a technician's making and conditional on the parents' desire.* No, such a being can only be received as a gift, as the fruit of the parents' mutual self-giving and conditional only on God's will to call him or her into being. To say it again with *Donum vitae*:

In his unique and unrepeatable origin, the child must be respected and recognized as equal in personal dignity to those who give him life. The human person must be accepted in his parents' act of union and love; the generation of a child must therefore be the fruit of that mutual giving which is realized in the conjugal act wherein the spouses cooperate as servants

and not as masters in the work of the Creator who is Love.[23]

Of course, parents are always struggling with the expectations they have of their children. They have desires and hopes for them; they are ambitious for them. And while hopes, dreams and ambitions have a rightful place in parenting, they do so only inasmuch as they remain reconcilable with what Maureen Junker-Kenny calls the foremost pedagogical quality, namely, “to be able to control one’s own projections.” To put it in biblical terms, the principle of healthy parenting is “Thou shalt not make an image of me,”[24] said not by the Lord to his people, but by the child to his or her parents. ARTs make of one’s projections and desires the very principle of the child’s existence. Evidently, this does not mean that for parents and children in this situation everything will be lost. Parents may still learn to love and accept their artificially conceived children unconditionally, once they are there. But this can only happen on the basis of a *metanoia*, a rethinking, a turning away from the principle that made them artificially produce their child.

What will happen if, as a society, we do not live through this *metanoia*, this change of heart, but allow the logic of ARTs to be carried out to the end? The first thing that will happen according to this logic is an ever better efficiency in making our children according to our desires. As Gauchet puts it: “From the child of desire to the child the way I desire him or her, the road is one.”[25] Embryo selection and genetic enhancement are not procedures that are simply juxtaposed to the logic of ART but belong to it inherently, which is why it will be difficult for any legislation to allow for ART but to say “no” to eugenic practices or enhancement procedures. The child whose reason for being is solely with his or her parents’ desire will logically turn out to be a designer baby. Jürgen Habermas rightly questions to what extent a genetically modified person can still consider himself “the undivided author of his own life,”[26] since he owes important facts of his physical constitution to the decisions of others, whom he could always blame and whose intentions for him are as it were incarnated in his body. Whatever Habermas says about genetic enhancement can also be applied to artificial procreation inasmuch as the parents’ desire is the guiding principle of both.

The same holds true for savior siblings. Here the underlying logic is made still more explicit. By definition savior siblings are not wanted for their own sakes, but for the sake of a sick brother or sister for whom they are meant to provide material needed for a cure. We may put it bluntly: one of the main problems with artificial procreation is that every child thus conceived is reduced to the status of savior sibling, even if he or she does not have an ill brother or sister. It is the parents he or she has come to save: from the consequences of their infertility, to heal their unfulfilled desire for a child.

Once we get more and more used to the idea that human life is something to be programmed, human cloning will sooner or later lose the repugnance we still associate with it.[27] In any case, creating clones of strong, healthy, intelligent and successful people – if this is what we want to create – would seem to be a much more efficient and reliable way of controlling the beginning of human life than our feeble attempts to influence the genetic lottery by complicated and unreliable techniques of genetic modification.

Finally, if we program the beginning of human life – if ART replaces nature and technology replaces chance at the moment we come to be – why then should we, as enlightened, autonomous and responsible agents, leave the moment of our passing to the chance of nature? If the beginning is programmed, why not also program the end? The logic of ART is: human life is something human beings need to dominate. The “promising” result of this logic would then not only be a good birth but also a good death. Thus, to my mind, the logic of ART, if spelled out to the end, leads to a widespread acceptance of euthanasia. If what governs people’s entry into



life is a desire achieved by human programming, why should the same desire not also govern people's exit from this life?

What can we do if we do not think this new world to be brave? Perhaps the notion that there can be true novelty and human equality only if the beginning is contingent may still find echo in the hearts and minds of our contemporaries. We should do the best we can to help them understand that we simply cannot make *new* human beings forcing them into the mold of our *old* ideas, i.e. the plans and visions we have for them even prior to knowing who these newly arrived individuals actually are. The contingency of the beginning alone guarantees authentic newness and equality, and our attempts at programming humanity on the basis of our momentary desires and limited lights will have consequences by far more devastating than the former Communist country's attempts at programming and planning the economy.[28] Indeed, for Hannah Arendt the contingency of birth is nothing less than the miracle that saves the world. We read:

The miracle that saves the world, the realm of human affairs, from its normal, 'natural' ruin is ultimately the fact of natality, in which the faculty of action is ontologically rooted. It is, in other words, the birth of new men and the new beginning, the action they are capable of by virtue of being born. Only the full experience of this capacity can bestow upon human affairs faith and hope. ... It is this faith in and hope for the world that found perhaps its most glorious and most succinct expression in the few words with which the Gospels announced their 'glad tidings': 'A child has been born unto us.'[29]

[1] Cf. Nancy Whitelaw, *Margaret Sanger: "Every Child a Wanted Child"* (Macmillan Press: New York, 1994).

[2] Cf. Livio Melina, *Building a Culture of the Family: The Language of Love* (St. Paul – Alba House: Staten Island, NY, 2011), 8.

[3] Marcel Gauchet, *Il figlio del desiderio. Una rivoluzione antropologica* (Vita e Pensiero: Milano, 2009), 55-56 (first published in French as "L'enfant du désir," in *Le débat* 132 (November-December 2004): 98-121); all English translations of Gauchet are my own from the Italian.

[4] Congregation for the Doctrine of the Faith, *Donum vitae*, II, B, 5.

[5] Robert Spaemann, "Kommentar," in Congregation for the Doctrine of the Faith, *Die Unantastbarkeit des menschlichen Lebens—Zu ethischen Fragen der Biomedizin* (Herder: Freiburg i.Br., 1987); Martin Rhonheimer, "The Instrumentalization of Human Life" in *Ethics of Procreation and the Defense of Human Life: Contraception, Artificial Fertilization and Abortion*, ed. William F. Murphy Jr. (Washington, DC: The Catholic University of America Press, 2010), 153–78.

[6] Cf. Marcel, *Homo Viator: Introduction to a Metaphysics of Hope*, trans. E. Crawford (New York: Harper & Row, 1962), 120.

[7] Melina, *Building a Culture of the Family*, 168.

[8] Cf. Rhonheimer, "The Instrumentalization," 162–63.

[9] Cf. *ibid.*, 162.

[10] Cf. *ibid.*, 164.

- [11] Ibid., 162.
- [12] Ibid., 167.
- [13] Cf. Spaemann, “Kommentar,” 93, translation my own.
- [14] Congregation for the Doctrine of the Faith, *Donum vitae*, II, 4 c.
- [15] Cf. Rhonheimer, “Instrumentalization,” 166–67.
- [16] Ibid., 156.
- [17] Cf. Ibid., 168.
- [18] G. Marcel, *Homo viator*, 116.
- [19] Gauchet, *Il figlio del desiderio*, 68.
- [20] Ibid., 83.
- [21] Cf. Spaemann, “Kommentar,” 93.
- [22] Cf. Rhonheimer, “The Instrumentalization,” 158–59.
- [23] Congregation for the Doctrine of the Faith, *Donum vitae*, II, 4 c.
- [24] Cf. M. Junker-Kenny, “Genetic Enhancement as Care or as Domination? The Ethics of Asymmetrical Relationships in the Upbringing of Children,” *Journal of Philosophy of Education* 39 (2005): 1-17; here, 12.
- [25] Gauchet, *Il figlio del desiderio*, 87.
- [26] Jürgen Habermas, *The Future of Human Nature* (Cambridge, UK: Polity Press, 2003), 63.
- [27] Cf. Leon Kass, “The Wisdom of Repugnance. Why We Should Ban the Cloning of Humans,” *The New Republic* (June 2, 1997): 17-26.
- [28] Cf. Robert Spaemann, “Begotten, Not Made,” *Communio* 33 (Summer 2006), 291.
- [29] Hannah Arendt, *The Human Condition*, 2nd ed., Chicago: The University of Chicago Press, 1998, 247.
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# Humanum

Issues in Family, Culture & Science

## FEATURE ARTICLE

### The Rights of Children: Biology Matters

MELISSA MOSCHELLA

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Now that many children conceived with the help of donor sperm or eggs have reached adulthood, many of these donor-conceived adults have claimed a right to know their biological parents. This phenomenon has led a number of European countries to outlaw gamete donation. Even in places where anonymous donation remains legal, such as the US, there is a growing trend toward the use of non-anonymous donors. This shift away from the use of anonymous gamete donors parallels the shift toward greater openness in adoption, and it marks an increasing recognition that knowledge of one's biological origins and contact with one's biological parents when possible are important for human well-being.

This recognition points to a more fundamental critique of donor conception. Indeed, the basic premise of arguments against *anonymous* gamete donation—the recognition that children have a fundamental interest in knowing their biological parents—implies that conceiving children with donor gametes is *always* morally problematic, even when the donor is not anonymous, because it always involves conceiving children with the intention of depriving them of a parental relationship with one of their progenitors. Thus, it is different from the usual case of adoption, in which a child already exists; putting a child up for adoption is an attempt to give that child the best possible care in non-ideal circumstances.

Although it seems hard to deny that children can benefit from access to *information* about their biological parents, many remain skeptical of the claim that actually being *raised* by biological parents is important for the well-being of children. After all, many adopted and donor-conceived persons flourish in life, and many children raised by their biological parents fare poorly. And while social science shows that children tend to do best overall when raised by their married biological parents, some argue that this is simply due to cultural attitudes that place so much emphasis on the importance of biological ties.

An accurate ethical evaluation of donor conception requires a deeper philosophical investigation of the common view that parent-child biological ties really matter *in themselves*. In other words, we must ask: Are there unique benefits to children in being raised by their biological parents? Or is a biological parent fully interchangeable with any other equally

competent and loving parental figure?

I argue that the parent-child biological bond really does matter in itself, because there is at least one unique and important benefit that biological parents—and only biological parents—can provide for their children: *their* parental love. My claim, in other words, is that children have a fundamental interest in being loved by their biological parents, and that, strictly speaking, no one else can replace biological parents in this regard. Moreover, except in cases of genuine incompetence, biological parents cannot love their children as they ought to—as their children need them to—without raising those children themselves.

Certainly, when biological parents cannot or will not raise their children themselves, others can generously take on that task and do an excellent job. And, in doing so, they can show great love for those children. But their love cannot *replace* the absent love of the child's biological parents, any more than the love of another man or woman can replace the love of an absent or deceased spouse. Biological parents, simply by virtue of their biological (genetic) connection to their children, have an intimate and personal relationship to those children that makes their love irreplaceable. The absence of their love is not like the absence of a stranger's love, because, even if they have never actually met, biological parents are *not* strangers to their children.

This view presupposes the claim that human beings are bodily persons. Our bodies are an essential aspect of who we are, not just an extrinsic instrument that we use to express the thoughts, desires and choices of our conscious self. If you are tempted to deny this, consider the following questions: Do you think that rape is a genuinely personal violation, not just a violation of property, even if the victim is unconscious, never finds out, and suffers no physical harm? Do you think that assault is a more serious crime (more serious in *type*, not just in degree) than vandalism, because it involves an attack on one's person rather than just one's property? Do you think that the desire to seek out long-lost relatives is intelligible, or that it makes sense to seek to get to know one group of people rather than another simply because they are your relatives?

If so, then you believe that humans are essentially bodily persons. And if so, then biological parents really do stand in a special personal relationship to their children, even if they have never had any conscious interaction. Since biological parents have an intimate relationship with their children, it makes sense to claim that children can miss the love of absent biological parents even if they are well-loved by others, in the same way that I can miss the love of an inattentive or unfaithful spouse even if I have many other loving relationships.

In a weak sense, of course, everyone has a relationship with every other human being at the bodily level, insofar as we all share a common genetic origin and inheritance. Further, the love of any particular person is always irreplaceable, in the strict sense, to every other person. Does this imply, then, that every person has a non-transferable obligation to love every other person? Yes, it does, in the sense that every person has a general obligation to promote the overall human well-being of every other person, and love is essentially a commitment to the well-being of another. The well-being of some, however, will rightfully take priority over that of others in accordance with the closeness of one's relationships and the importance of the benefit that one can provide.

The biological parent-child relationship is uniquely intimate and comprehensive, at least from the child's perspective. A child's relationship to his biological parents is the closest of that child's human relationships. It is identity-determining. To be born of different parents is to be an entirely different person. This, combined with the observation that receiving proper care is

crucial for the child's current and future well-being, implies that biological parents are the ones with the strongest obligation to ensure that their child is well-cared for.

Translated into the language of love, this means that the love parents owe to their children is special and prioritary—that is, it should take precedence over most other loves. Further, the obligation to love one's biological children is a strictly non-transferable one. Biological parents must love their children *themselves*; it is literally impossible for anyone else to do it for them.

Yet why can't biological parents fulfill their obligations to their children simply by ensuring that competent others will raise the child? The reason is that the special and prioritary love that biological parents owe to their children is almost always incompatible with failing to raise those children. The exception, of course, is when there are extremely serious countervailing reasons such as genuine incompetence, reasons of the sort that the child herself—once she is capable of making a mature judgment on the matter and learns why her biological parents chose not to raise her—would be able to understand that this choice involved no failure on their part to love her adequately. In a case like that—but *only* in a case like that—it is possible to fulfill one's strictly non-transferable obligation to love one's biological children without raising those children oneself.

It is also worth noting in this regard that empirical evidence about adopted children supports the claim that the love of one's biological parents is important and irreplaceable to children, and that its absence has a significant negative impact on children's overall well-being. Researchers have noted that one of the greatest psychological difficulties that adopted children face is the sense that they have been rejected or abandoned by their biological parents. On the other hand, one of the advantages to children of "open" rather than "closed" adoptions is precisely that open adoptions allow children to learn that their biological parents *did* and *do* love them, and placed them for adoption *because* of that love.

Further comparison between gamete donation and adoption might help to add plausibility to my claim that children have a *prima facie* right to be raised by their biological parents, based on their absolute right to be loved by their biological parents. If biological parents were to place their children for adoption for trivial reasons—because, for instance, it would interfere with their vacation plans—we would consider that decision to be morally wrong. It would constitute a failure to fulfill serious moral obligations toward their child without a sufficiently weighty reason to excuse them. Further, we would think it wrong for a couple to intentionally take steps to conceive a child, or to take actions with a high probability of resulting in conception, when they would be unwilling to raise that child, even if the reasons are non-trivial and they really are incompetent. Consider the following case:

Amanda and Arnold are in desperate need of money. Amanda learns of a local fertility clinic that is offering generous compensation for participation in a study on the effectiveness of fertility treatments. Amanda and Arnold decide to participate in the study, foreseeing that Amanda will most likely become pregnant as a result. If conception does occur, they plan to give the child up for adoption as soon as he or she is born, because their financial situation would make it impossible for them to care for the child adequately.

This case seems to be the exact moral equivalent of what egg and sperm donors do. Just like Amanda and Arnold, donors knowingly perform actions that will most likely lead to their becoming biological parents, while having no intention of raising their offspring themselves. If we think that Amanda and Arnold's actions are wrong, we should also think that the actions of gamete donors are wrong, and for precisely the same reason: a child has a *prima facie* right to be raised by his biological parents, based on the absolute right to be loved by his biological

parents.

This line of reasoning provides a principled account of our intuitions about the wrongness of conceiving and/or placing children for adoption for trivial or mercenary reasons, and it applies perfectly to the case of gamete donation. Sperm and egg donors, by acting in a way that will lead to their becoming biological parents precisely on condition that they will not be called upon to raise the resulting children, thus act wrongly by failing to show adequate respect for the needs and rights of their future children. Their wrongdoing consists in a willingness to harm their future children by depriving them of an important benefit to which they have an absolute right: being loved by their biological parents.

What about the individual or couple who uses donated eggs or sperm to conceive? If it is wrong for someone to donate gametes, then it is also wrong to contribute to the practice by creating a demand for it. It is patently unjust for a parent to prioritize his or her desire for a genetically-related child over the child's right to be loved and, when possible, raised by *both* genetic parents.

What I have shown, in sum, is that biological parents have a strictly non-transferable obligation to love their children themselves, an obligation which is weighty, given the unique closeness of the parent-child biological relationship and the importance of this benefit for the well-being of the child. Further, in order to love their children adequately, biological parents must raise those children themselves, except in cases of genuine or incompetence. These obligations on the part of parents correlate to children's absolute right to be loved by their biological parents, and to children's strong *prima facie* right to be raised by their biological parents.

Intentionally choosing to conceive a child in a way that will alienate that child from one of her biological parents and one-half of her biological ancestry is a failure to respect that child's rights.

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# Humanum

Issues in Family, Culture & Science

## FEATURE ARTICLE

### When Art Replaces Nature

MICHAEL HANBY

To understand the problem implied by the title—when art *replaces* nature—we must first understand the original meaning of the distinction between art and nature, between the realm of the ‘born,’ (*nascor, natus*) and the made. The distinction is probably as old as philosophy itself, but it was Aristotle who gave it to us in the form that would become axiomatic in the West till the seventeenth century: “Art imitates nature.” Imitation, here, has both a positive and a negative sense. In its positive sense, it means that artifacts, in their rational organization, in their end-directedness, in their semi-permanence, and even in their beauty, can serve as analogies for understanding nature more deeply. Indeed it seems endemic to the human condition that we understand ourselves in the image of our artifacts. Despite the allergic reaction of scientists, and especially evolutionary biologists, to even the hint of ‘design’ in nature, this is truer now than it has ever been. It’s simply that the designing hand of history has replaced the hand of God, that computers and information systems of the 21<sup>st</sup> century have replaced the clocks of the 18th century in our imagination. Negatively speaking, to say that art imitates nature is to say that a natural thing—which for Aristotle means primarily a *living* thing—has something that an artifact lacks, or better, is something that an artifact is not. A natural thing, according to Aristotle, is characterized by *entelechia*, by having, or rather *being*, its own end, its own project. An artifact, by contrast, is not an end in itself. Rather its end is imposed upon it from the outside and bears only an accidental relation to the stuff from which it is made. Its project is not its own, but its maker’s. Thus Aristotle and Aquinas both say that “we are the end of artificial things.”

The difference between being one’s own end and not translates into a difference in the *kind of unity and organization* which each sort of thing exhibits. A living thing from the beginning of its existence is a genuine *whole*, what the scholastics would call a *per se* unity, whose being is both simultaneous—given all at once—and successive, unfolding in time. It remains *existentially* indivisible so long as it is the being it is, despite the constant recycling of its matter, and to just this extent, its unity transcends and thus *ontologically* precedes the temporal development of its parts. This is why we can ascribe a history of development *to* the organism and say, for example, that I was once a blastocyst. An organism is thus, in Kant’s words, both cause and effect of itself: its parts develop *for the sake of* and *by means of* each other, as the parts of the organism whose parts they are. The unity of an artifact, by contrast, is simply a unity of aggregation and organization which binds together otherwise independent

parts in an accidental relation—though this organization can obviously be quite complex. An artifact does not ontologically precede and transcend its parts except in the mind of its maker—its unity, which also imitates the unity of a natural thing and often times outlasts it—does not properly belong to it. Consequently, an artifact does not *develop* as a living thing does; rather it comes about as the consequence of its piece by piece assembly.

We can see from all this that the distinction between nature and art thus signifies two radically different ways *of being a thing*, two ways that things stand in relation to their being. A living thing, though it has its being as an unsolicited gift, nevertheless *possesses its being as its own*, internally, as a subject. And so it moves itself from the inside out in the project of maintaining its being undivided: assimilating the world to itself, growing, developing, repairing itself, and generating others like itself. An artifact has only *an external or accidental relationship to its own being*, and so is not really a subject of being in the same way. At best it can merely imitate some of these activities, even though it can be designed in such a way so as to exceed the capacities of its maker in some of them, thus magnifying its maker's power. The living thing is therefore characterized by an incommunicable *interiority*—and thus a *freedom*—that an artifact lacks, an interiority and freedom that make it a surprise even to itself. “I have become a question to myself,” said St. Augustine. It is an index of this interiority that we can ask the question of Thomas Nagel's famous essay—What is it like to be a bat?—because a living thing, as a subject of being occupies a unique and unrepeatable perspective within the cosmos. It is *like something* to be a living thing. Whereas the question ‘what is it like to be an iPad?’ makes no real sense, because it's not like anything.

With the advent of modern science in the seventeenth century, this distinction collapsed. There is a complex philosophical history here that I won't go into but as a result of this history, art would no longer *imitate* nature. Rather nature would be conceived as artifice—manufactured at first by God and later by history or natural selection. With nature reduced to artifice, *logos* becomes *techne-logos*—the technological fusion of knowing and making announced in Bacon's famous formula, ‘knowledge is power’—and so knowledge of nature becomes a kind of engineering. We know nature precisely by unmaking and remaking it. The truth of nature becomes precisely identical to the various forms of control we can now exercise *over* nature: in the form prediction and retro-diction, successful replication of experiments, or manipulating nature for our own ends.

If a natural thing is distinguished from an artifact by its unity, interiority and freedom—and ultimately, by having its own being—then we can see what the conflation of nature and art amounts to. To conceive of nature as artifice is to reconceive an organism as a mere unity of organization and aggregation, to impinge upon its freedom, to empty it of its interiority, and to instrumentalize its being. It is, in essence, to deny that living things are their own project and to make them *our* projects. As John Dewey would put it early in the 20<sup>th</sup> century, “Things *are* what they can do and what can be done with them.”

Now we come to the point. ARTs [Artificial Reproductive Technologies] *are* the logical outworking of this deep-seated ontology. They are this ontology in action, so to speak; this ontology turned on us. The very act of removing conception from the body, manipulating embryos through IVF, ISCI, or Assisted Hatching, and the standard regime of pre-implantation diagnosis, genetic screening, and embryo selection treats embryonic life as an artifact, as an aggregation of component parts to be controlled, selected, and worked upon, with humanity ‘supervening’ only at some later point, either with the emergence of certain ‘essential’ characteristics, or whenever *we* develop an emotional attachment to it. This mechanistic regard is *built in* to the technique itself, irrespective of how I might think or feel about the embryos in the petri dish.



What we see here is that, this technology essentially forces parents to become the artisans of their children. Like the power of Tolkien's one ring, this power is an excruciating burden to bear, since it forces parents to make intolerable choices that are too big for them. Even more ominously, though, than making parents the artisans of their children, ARTs make the scientists whose growing body of expertise is built upon these techniques, *the artisans of future generations of children*, a burden shouldered much more lightly without the additional weight of love and responsibility. The power of the artisan over his product is *essentially* despotic in relation to incipient life, even where it is exercised benevolently. For by treating the embryo *as if* it were an artifact—by treating it as our project rather than their own—this power instrumentalizes its being, and thus does violence to what the child in its embryonic stages is.

This violence is most evident while the child is still in its embryonic stage where, sadly, 'instrumental' often means 'disposable' if pre-implantation diagnosis determines that the embryo is not what the Human Fertilisation and Embryology Authority in the UK calls "quality." Or if it happens to be a girl. Or if it is just unlucky. Abortion is an inherent feature in the standard ART regime of manufacturing, testing, and selecting embryos. The pro-life community needs to be clear-sighted about this. What arguably makes ARTs even more egregious than ordinary abortion *in utero* is that these 'spare' persons are being manufactured, in essence *in order to be aborted*.

Other dimensions of this violence are more subtle. Given the impossibility of gathering longitudinal data on the children conceived by these techniques prior to our actually conceiving them, 'instrumental' for those who are allowed to live means 'experimental.' Which is of course how evolutionary biologists more or less think of living things in the first place: as the accidental result of a long history of trial and error. We often lament the fact that ARTs lead to experimentation *on* embryos. We lament too late. We need to think more deeply about the fact that the persons conceived through ARTs are already conceived, and in a sense live their lives, *as experiments*. Knowledge is power, you will remember, and the more penetrating our knowledge of the embryo's fitness, genetic makeup, and propensities, the more complete is the power that will have already been exercised over him. This power is inherently incomplete to be sure. This is true even of what Jonas calls 'dead matter' engineering. Such products, once they are launched into the stream of time, often elude our control. And it is more profoundly true in the case of bioengineering. "Its' deeds," says Jonas, "are irrevocable. You cannot recall persons or scrap populations." Nevertheless to be someone else's experiment, to have been 'selected' for quality after careful testing and screening is to have already been denied the freedom of being a surprise to oneself, well before we come to any second order experimentation. The more 'successful' the experiment, the more complete that power is. But it is precisely because these technologies *already* conceive of embryonic life as an artifact, and indeed an experiment, and not because they are '*applied*' immorally, that it has led ineluctably to the warehousing of frozen embryos in a kind of limbo, to embryonic research, and to eugenical fantasies of three parent embryos, germline manipulation and other designs to better produce the living artifact in our image and according to our specifications.

Of course parents who resort to ARTs *intend* none of this. They are not *thinking* of dominating nature or seizing control of evolution. They simply want a child and are blinded by their desperation to the true nature of their deed. Inasmuch as it is this deed is ontological, its consequences are unavoidable; for reality will not go forever unavenged. And so I am convinced that even parents who *succeed* in conceiving through IVF eventually find themselves haunted in all sorts of ways by unanticipated anxiety over the gravity of their deed. It must be unbearably difficult. One can repent of an abortion. But it is difficult to acknowledge the violence inherent in IVF without feeling at the same time the need to repent of what no parent should ever be asked to repent of, namely the existence of the child that she

loves more than she loves herself. What parent would ever accept that? Faced with the anguish that follows upon this violation of the truth of being, the parents' life can easily become a rearguard action against having to confront this unbearable truth and to repent of the unrepentable, to face up to the questions: What was I thinking? What have I done? We have heard from personal experience, that something similar often occurs on the side of the child, as he or she struggles with the violence and ambivalence at the origin of her existence. How am I supposed to lament the act that gave me life, and yet how can I not?

This creates a massive inducement *not to think deeply* about what we have done, or who we are. This inducement is social as well as personal, and it affects the way we speak, the way we teach our children, the cultural inheritance and institutions we pass on to them. Which is to say that it affects everything. It's like living in a communist country where you have to speak a public language that everyone knows is a lie and a private language of truth, until the one infuses the other and you can no longer tell the difference. We are building a culture, or destroying one, depending upon how you look at it, on the back of an ontological lie.

What all of this shows is that parents are not the masters of this experiment, so much as they are physically, spiritually, and socially a part of a much larger experiment. And so the issue is *not* really the *subjective* motives of those who, in their desperation, take recourse to these techniques. The issue is rather the *objective inner logic* of ARTs and the underlying ontology it represents. The deeper issue, in other words, is *what the child is* from the vantage point of these technologies. I have argued that from the point of view of ARTs, and of the society which is recklessly riding the wave of ARTs toward a bleak eugenical future, that the person is an artifact, which is to say, not really a person at all. In which case the arrival of ARTs—where responsible procreation takes place in the laboratory—is the final triumph of art over nature, and over the *humanum*.

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# Humanum

Issues in Family, Culture & Science

## FEATURE ARTICLE

### Rights without Limits: Legal-Political Reason and the Shared Logic of Same-Sex ‘Marriage’ and ARTs

DAVID S. CRAWFORD

#### Introduction

My thesis involves the following points: First, the emergence of “gay marriage” and Artificial Reproductive Techniques (ARTs) as realities and ethical, political, and legal issues in our current cultural situation is simply the fruition of a much older cosmological, anthropological, political, and jurisprudential logic, which is now becoming ever more visible as praxis. The development of these two current issues, and the dominant ways of conceiving them, therefore share a common root. To put it more polemically: the current debate about “gay marriage” is already “technological” in its structure and implications; the explosive advent of ARTs is already structurally “gay”; and the dominant ways of conceiving the human person and his world have been implicitly “gay” and “technological” for a very long time.

Second, and as a consequence, the dominant form of public reason—that is to say, political and legal reasoning—in the United States and other Western liberal societies possesses an inner logic that is impervious (and presumably will remain so for the foreseeable future) to the sorts of arguments that would be necessary to explain intelligibly why the civil recognition of same-sex marriage and the technologizing of the begetting and bearing of children are harmful to people and to society. The most impressive evidence for this unintelligibility is the decade-long tendency of U.S. courts to decide that these arguments are not simply weaker than their competitors, but that they lack the first and most essential characteristic of any valid argument, viz. its basic cogency. This is precisely because the dominant form of public reason *itself* reflects the “gay” and technological logic just mentioned. Indeed, this is why the arguments put forward by Catholics and others contrary to these developments increasingly fail not only to win the debate but even to retain public rationality.

Third, therefore, public debate requires that we probe very deeply into the problematic of the person and his place in the world today and that we thoroughly interrogate their meaning for public reason. It is not enough simply to repeat traditional arguments about the proper role of marriage in society (although these arguments are of course crucial), but rather it is necessary to challenge the inner logic and philosophical assumptions that give rise to a problematic form of rationality, effectively nullifying the intelligibility of natural relations, such as those of the

sexes and the family.

What follows can only constitute the most cursory outline of these points and some of their implications, but it is important at least to attempt to throw light on them.

### Common Underlying Logic

To set us on our way, consider a few words of Benedict XVI, given in an address to the German Bundestag in 2011. He tells the German lawmakers, quoting legal positivist Hans Kelsen, that modernity views the world as “an aggregate of objective data linked together in terms of cause and effect.” But where this is the case, he continues, the conception of nature is “purely functional, in the way that the natural sciences explain it, . . . producing only functional answers.” As such, he tells us, it cannot produce “any bridge to ethics and law.”

The passage highlights several notable ideas for our thesis here, but which need to be unpacked. The first of these is the way modernity, in seeking to understand the world, characteristically has abandoned the classical forms of causality, in particular form and finality for natural beings. Regarding the loss of form, the result has tended to be that “parts” rather than “wholes” become the fundamental unit of intelligibility in trying to understand the world. We understand things by understanding the parts that compose them. When the individual parts themselves become the objects of interest, they too are understood in terms of their parts, and so forth, *ad infinitum*. Hence, any given nature is best grasped in terms of a compilation of its parts, the elements, dynamics and pieces that make it up. As Hans Jonas puts it, modernity replaces “the aristocracy of form” with “the democracy of matter.” He writes, “If, according to this ‘democracy,’ wholes are mere sums, then their seemingly genuine qualities are due to the quantitatively more or less involved combination of some simple substrata and their dynamics.”[1] But if things are most intelligible when viewed in terms of the parts that make them up, what things *are* must be viewed in the limited terms of the functional relationships of those parts. This is of course where we meet up with Benedict’s point.

There are further implications. The conception of reality in terms of functional relationships also introduces a logic of exchangeability into the basis for grasping reality. If something is, or can be made to be, functionally equivalent to something else, then the equivalents are essentially no different from each other in the functional relations making up the whole.

Correlating with this reduction to the functional relation of parts, the object of knowledge is also a project for technical activity. “The simultaneously cognitive and sexual significance of the Hebrew word ‘*jadah*,’ ‘to know,’” Robert Spaemann tell us, “stands . . . in opposition to the instrumental power to control things, which is how Thomas Hobbes understands this paradigm: ‘to know’ something means for Hobbes ‘to imagine what we can do with it when we have it.’”[2] In other words, the logic of exchangeability is also a logic or invitation to technological dominance. Here then, we also have the tendency to reduce *praxis* to *poiesis*, action to making. Here, then, we see also the loss of final causality at play; in order for us to know by domination we must give things their ends. But this possibility requires that they not already have their own immanent ends. For us to dominate our world, its parts and pieces must be understood as pure facticity.[3] However, if this reduction begins in the idea of a human subject operating on an external object, the human subject quickly becomes an object him- or herself. As such, the person is reduced to his or her parts and functional relations and is therefore subjected to the logic of exchangeability, progressive technological improvement, and production.

The foregoing is also closely related to the characteristically modern division between fact and value. The material object of human understanding, as brute fact and as the sum of its

mechanical properties, is valueless until value is added by the human mind and will. If, as Leo Strauss tells us, the basic posture of the ancients is contemplative while that of the moderns is active charity, we presumably have to understand that “charity” has taken on a new cast.[4] It is no longer a grace that structures knowledge and action from its beginning, an interior demand for knowledge and action to be authentic, but becomes an externally imposed moral obligation for an otherwise neutral technical progress. As Jonas says, the moral is no longer part of the structure of knowledge, let alone written into nature, but rather, it is an external imposition or obligation placed on the way in which physical bits and pieces of the world are used.[5]

Buried not too deeply within this account of nature, of course, is a fundamental angst. It is an angst that what is not produced and in principle controlled by human reason and will is *inhuman* and at least potentially a heteronomous imposition on freedom and dignity: either by what is lower (the world as brute facts and deterministic mechanism) on what is higher (man’s rational organization of his world in freedom); or alternatively, by what is higher (God’s externally imposed will) on what is lower (man’s autonomy). Rather than experiencing himself and the world within a philosophical and theological horizon of gratuity and gift, man finds himself in an isolated struggle between mastering his world or being mastered by it.

### The Problematic of Public Reason

This view of reality underlies and shapes political and legal thought—and therefore what are considered legitimate forms of “public reason”—in decisive ways. In order to see this point, we might begin by considering basic starting points of Thomas Aquinas’ theory of law and the political order. When Thomas speaks of human law, he does so in the context of his larger doctrine of law. If civil law is to possess the fullness of law, in fact if it is to *be* law at all, it must be derived from natural law either by what Thomas calls conclusion or determination. Natural law itself is rooted in inclinations: wanting to remain alive, wanting to join with one of opposite sex for the sake of children, etc. As these principles of natural law show, such inclinations presuppose powers of the human soul precisely insofar as this soul is embodied. Hence, we might say, practical reason, which ultimately issues in natural and then civil law, presupposes a robust anthropology, an anthropology that takes within its scope human embodiedness as an expression or presence of the soul in time and space. My simple point here is that civil law, as traced back through natural law and Thomas’ anthropology, takes the body into its purview not only as a fact of human existence but as a foundation and principle. We might say that this classical view places the body radically *inside* what we think law, and by extension the political order, *are*.

There is another implication. The starting point of inclination or desire correlates with the idea of perfection or fulfillment, that is to say, with natural ends and finally the natural end of the person as a whole. But to know what perfects or fulfills us requires knowing something about what a human being is. Hence, the central problem for ethics—knowing the human *truth* to which our experience of desire points—demands that we pay attention to anthropology, to what is given. It is not just the *fact* that we have various desires that is important, as the current debate typically assumes. Rather, what is crucial is understanding what those desires stand for, what their proper ends are, and how they can be rationally integrated into life as a whole. Being a man or a woman, for example, offers a universally “visible” starting point for understanding inclination or desire. In other words, the body serves as a sign of the inner human truth of desire. For Thomas, this knowledge constitutes the beginning of law and the political order. It means that law, stripped to its simplest, is nothing other than *a rational order toward human ends presupposing everything properly human*.

Now consider the Oxford legal positivist, H.L.A. Hart. While rejecting natural law, Hart famously allows that there must be what he calls a “minimal content,” that is to say, that minimal part of “natural law” that would be acceptable—if only natural law theorists would be chaste enough to so confine themselves. This “minimal content” is itself rooted in the minimalist starting point of modern political reason, that of Hobbes and Locke, seeing the basis of the political in the avoidance of death, either by violence or want. The *raison d’être* of the political and the legal are in other words the facts of human vulnerability. Hence, the legal and the political orders look to the avoidance of the *summum malum*—death, either through violence or the loss of one’s property—rather than the achievement of the *summum bonum*. Beyond this minimum, Hart tells us, the reasons men have for living in society are too diverse to be ranged under one idea of the good.

He briefly engages in science fiction to illustrate his point. What if, he asks, humans were one day to evolve into giant land crabs, with an impenetrable carapace and the ability to synthesize food from the air? Then there would be no reason for law; the lack of vulnerability would render it needless. One might add that, given his starting point, there would also be no reason for political society. Unlike vulnerable humans, such invulnerable crabs would have no reason to quit a Hobbesian or Lockian state of nature. Of course, they could conceivably band together for common projects, but doing so would presumably depend on various sets of them deciding voluntaristically on a contingent goal above and beyond survival. Other than this, what would any of them have to do with each other?

What Hart does not mention, but what we realize upon reflection, is that his science fiction is his anthropology; we *are* in fact the land crabs, albeit lacking the invulnerability afforded by the carapace and synthetic capabilities. In fact, to follow the logic, we provide ourselves in the form of law and political order with functional equivalents or substitutes for the carapace and synthetic abilities. Beyond the fact of vulnerability, the basis of society is the contingent purposes of individual men and their particular wants and goals. But because these particular goals are not necessary ones in the way that survival is, they are also not themselves part of the “minimal content.” Law, then, is a set of rules necessary to deal with the problem of vulnerability and in addition these further wants and social facts. The anthropology is not so robust as that of Thomas, but it is nevertheless an anthropology, and perhaps it is more robust than Hart and we might at first think. In any case, by implication and tacitly, Hart is telling us what human beings are. But to say what human beings *are* is inevitably to imply *what is good for them*. For Hart, like many other political and legal philosophers of our day, what is good for people is to decide for themselves what is good for them: it is the sheer exercise of freedom in a world of determinisms. The human vocation is to give oneself a vocation. Indeed, Hart shares this basic anthropology with other eminent thinkers of our day, such as John Rawls and Ronald Dworkin.

What more can we say about this anthropology? Our discussion of Hart shows that liberal public reason is not rooted in an anthropology that includes the body as a principle necessary to understand what civil law is, but only as a factual and in principle contingent reality with which law must deal. In effect, legal reasoning can then only see the body as part of the sum total of social facts, as one of its contingent objects. We could put it this way: if the classical theory of Thomas sees the order manifested within the body as a principle radically immanent within the idea and order implied by human law, the political order, and therefore any adequate form of “public reason,” Hart sees the body as a contingent and factual matter standing “outside” the idea of law, albeit as an important aspect of the sum total of social facts making law necessary and desirable. Similarly, if for Thomas man’s final destiny can only occur in an eschatologically elevated body without which he cannot be whole, for Hart man’s destiny may very well be in technological substitutes for the body in its parts and functions.

What difference does this seemingly subtle distinction make for legal and political reason? The difference is that between nature and facticity. For Thomas, human law is only law insofar as it gives rational order based on everything that it is to be human. For Hart, law most fundamentally serves as protection in view of vulnerability. But for Hart, everything else we might say about the essentially human is up for grabs. Clearly this vulnerability is related to our embodiedness, but only in a contingent and factual way. The body does not offer us signs of what is essentially true about humans and their destiny. The difference in other words is the difference between seeing physicality as offering ethical foundations, and seeing physicality as offering merely the material conditions with which ethics, law, and the political order must deal as external objects and projects. But such a notion of public reason cannot deal with the body as indicating anything more than its functional relations. That the body would be this way or that way makes no difference to what law is as a form of public reason, but only to the factual or empirical conditions with which it must deal. The sort of functional equivalency mentioned a moment ago is therefore tacitly endemic in this form of public reason. Hence, when it comes time to make publically intelligible arguments that depend for their foundations on being able to say what a human being is or what the meaning of human desire or the significance of the body's sexual dimorphism are we can only speak in terms that presuppose a framework of the contingently factual and functional.

Those social facts do of course—as things perhaps stand now, or as at least as they stood in Hart's day—include that human beings are divided into male and female, that children normally or often result from their union, that some sort of stable relationship should be provided for the extended period of nurturing and education humans need. But again, these are only social facts and are therefore, in principle, contingent, functional, exchangeable with equivalents.

If human goals are too diverse to be ranged under a single conception of the good, the purpose of law and the political, beyond the minimal content, is to offer a social context in which these diverse goals may be realized insofar as doing so is not parasitic on others' vulnerabilities. Dworkin calls this notion of freedom, "freedom as independence," and it is the basis for rights. Likewise Rawls defines political freedom as "an equal right to the most extensive basic liberty compatible with a similar liberty for others." [6] Human welfare, then, must be rooted in the rights of the individual to develop these goals, to self-legislate. The functionalist view of nature, by its very logic, is only the flipside of human freedom as indifferent spontaneity. Such rights are necessarily without limits because they are necessarily without interior order. On the other hand, perhaps they are *not* without limits! Rather, the limits are only externally imposed ones, those of competing external positivisms. Indeed, this notion of freedom leaves us with a series of positivisms. There are the positivisms of individual wills and freedoms to self-legislate, and there is the positivism of law and the political order. It is public reason's destiny, then, to mediate between these in increasingly fine and detailed ways. In doing so, law must also increasingly legalize or regulate natural relations, such as those of the family, in view of protecting freedom as independence. It is these natural relationships and communities that constantly threaten to order freedom prior to the individual's autonomous act of choice. They threaten to give us a vocation before we are able to give one to ourselves. They become therefore sources of oppression. But if the human and personal relations signified by the body are only factually contingent, the artifacts of evolutionary biology, then they also to that extent are drained of their genuinely human significance insofar as human consciousness and freedom rise above the mindless interplay of force and matter. Such relationships, and the natural communities to which they give rise, can then be legitimately policed by the state. These relations and communities—for example, the marital and familial communities—are then fragmented into two parts, the biological and the legal halves. But neither of these, nor both together, constitutes natural relations or communities. [7]

Of course, the whole purpose of this positivist approach is to promote well-being for society and people. This is especially true of those whose rights must be exercised on their behalf, due to incompetency, such as children. But how do we know what well-being is? According to the anthropology we have been discussing, the answer would have to come in the form of the empirical and functional; we would look for a quantifiable measure of outcomes. But how do we know that we are measuring the right things or that what we are measuring is susceptible to measurement? There is no way to answer that question, except to fall back on the functional and empirical, which of course begs the question.[8]

In sum then, if the body is merely a contingent reality, an aspect of human life, with which law must deal, then it is also infinitely plastic as a social fact. It can have no inherently or given human meaning, but only the meanings we choose to give it through our acts of freedom. Prior to these acts of freedom, it just is. Technological manipulations of or even replacements for the body and its parts have no further implications for law than their generating new social facts with which law must deal, policing competing freedoms and interests. But the law's central meaning and purpose are not implicated by these manipulations or substitutions. These results have profound implications for what we think legitimate modes of public discourse are—that is to say, what appears to be intelligible as public reason.

### Unintelligibility of the Arguments

Where does this leave us with respect to our narrower question of the advent of same-sex marriage and ARTs and their relationship? Consider the arguments that have been put forward on either side of the debate concerning same-sex marriage. To the argument that marriage has always had something to do with procreation, the answer is that traditional legal views of marriage are both overly broad (opposite-sex couples who are sterile or simply choose not to have children are allowed to marry) and under-inclusive (same-sex couples who do have children by means of modern ARTs or otherwise are excluded from marriage). In other words, a same-sex couple is no different from a *sterile* opposite-sex couple, just as a same-sex couple using ARTs is no different than a *fertile* opposite-sex couple.

To the argument that the state has an interest in using its marriage laws to promote the optimal family context for nurturing children, which includes both a mother and a father, the response has been that this argument perpetuates antiquated views of gender roles, that the sexes as a matter of state policy are interchangeable, and that such an argument effectively implies a reinstitution of the common law doctrine of coverture.

Again, it is worth pondering for a moment what the courts actually have and have not said: over the last decade-plus, they have not said that these traditional arguments are valid but weaker than their competitors, but rather that these traditional arguments fail to meet even the most minimal standard of legal and political argumentation, its basic rationality. The courts are saying that these arguments are essentially incoherent as valid forms of public reason. The implications are, needless to say, breathtaking.

Supporting these responses is an ideology—in fact a definite and radical anthropology—that has replaced the polarity between male and female with a new polarity, that between “orientations.” As the courts’ treatment of the traditional arguments indicates, the central feature of this shift is to emphasize sameness, exchangeability, or indifference between the orientations themselves and between men and women. Even the conceptual duality of homosexual/heterosexual or same- and opposite-sex couples expresses this shift. What the concept of orientation cannot but help to express is that the order inscribed in the body as male or female is indecisive in terms of the development of social and personal identity.



Rather this identity is given by the orientations themselves, either by an act of freedom set over and against a biologically deterministic world of functionality or (more commonly now) by a deterministic fixing of the orientation itself as an ersatz nature. In either case, the body is unavailable precisely as evidence for discovering the truth of desire.

Rather, the concept of orientation necessarily functionalizes the body, because the sexual desires and acts that define the orientation must nevertheless depend on the body's sexual order, which is the order of the male and female to each other. Therefore the body's natural ordination must be drained of its personal meaning; it must be seen as a merely physical or material or biological substrate for action, which is only the necessary condition for sexual acts of whatever type to occur. If the male and female bodies are then functionally equivalent in the sexual act, and therefore also in the development of personal and social identity, then it is only fitting that this functional equivalency would further express itself—would be augmented—by the technical functionality brought to bear on human relationships by ARTs.

On the other hand, if the functional equivalencies brought to bear by ARTs tell us that the body can be reduced to functional relations, then it is only consistent that we would be indifferent to male and female as a matter of public reason. To say that the techniques of the lab are equivalent to the conception and bearing of a child by means of the union of husband and wife is also to say that the natural union of man and woman is the equivalent of the techniques of the lab. Or rather, we are then committed to a logic that suggests that the natural union of man and woman is a technically inferior version of ARTs, a version without the same potential for quality control, for example. To say that mothers and fathers are simply interchangeable is to say that their obvious differences are unimportant and contingent features of a subpersonal material context for human being and action. Or to once again state it more provocatively, the logic of same-sex marriage is already structurally technological and the logic of ARTs is already “gay,” and the dominant strands of liberal western thought concerning the legal and the political are both.

Again none of this allows for an intrinsic “bridge to ethics,” in the words of Benedict quoted above. The legal, the ethical, and the political can only come as external standards, to be applied from the outside to new technical processes, regulating how they are used, rooted in a mediation of the positivisms of competing rights. In fact, a technological domination of the body and the world becomes a kind of moral imperative, since the inevitable emergence of drawbacks to our techniques and manipulations only provokes us to their further refinement.

### Deepening Responses

If the line of argument up to this point holds true, then it has deep implications for the way that we should respond not only to the precise issues of gay marriage and ARTs, but to many, many other issues as well. Repetition of the standard arguments is unlikely to do much good. Such arguments will simply fall on deaf ears, or appear uncivil and bigoted, as we are seeing throughout the West and westernized countries, and particularly in our courts, the media, and public discussion. Our objections are bound to appear only as an expression of private opinion, having little to do with genuine public debate, or in fact appearing as an unwelcome intrusion into what is conceived as neutral public discourse.

More insidiously, however, if we simply fall back on arguments that subtly share in the empirical/functionalist starting points of modern public reason, then, while we may win a battle here or there, we will also invite an acceleration of the current reconstitution of the social understanding of sexuality and the begetting and bearing of children. For example, if we begin by saying, in relation to an ethical assessment of ARTs, that “embryo science tells us two

important things about human embryos: what they are, and when they begin,”[9] we have already given significant ground to the idea that an embryo can be understood in terms of the functional relationships of its parts. Once this occurs, our further arguments concerning the technical manipulation of those same embryos will have taken on a significant liability. We will be left arguing our point on the basis of a logic of rights, which remains nevertheless unsupported by a metaphysics of the person. Or when we try to find common ground with our dialogue partners by arguing that the preservation of marriage as the life-long union of a man and woman ordered to the family ought to garner support even from within very different comprehensive doctrines of the good because the “*the nature of society* and, therefore, [of] what *naturally* makes human persons to be social beings . . . are not genuinely ‘metaphysical’ but empirical questions,”[10] we are staking our claim on an insufficiently solid foundation to support the important differences we seek to establish with the doctrine of those dialogue partners and therefore insufficient grounds for why anyone should think that our position is the better one. Or again, when we seek to make what is obvious to us seem obvious to our opponents as well by framing the social significance of marriage and family as “basic empirical truths,” or “the basic facts of our existence as real human beings,” or “basic empirical facts about the reproductive nature of the marital union and about the family,” we risk strengthening functionalism and its implications for functional interchangeability.[11]

In short, where our starting points do not take the debate to the deeper level, by which I mean a more robust anthropology and a more profound metaphysics, then the response to our empirical findings of harm is likely to be renewed commitment to further technical development to mitigate those harms and, simultaneously, new initiatives, policies and laws intended to mitigate the harms now conceived as the product of bigotry and privatistic incursions into legitimate public reason. In other words, we risk being reduced to silence.

[1] *The Phenomenon of Life: Toward a Philosophical Biology* (Evanston, Ill: Northwestern University Press, 1966), p. 201.

[2] “Ende der Modernität?” in *Philosophische Essays* (Stuttgart: Reclam, 1994),

232–60, quotation taken from an unpublished English translation by D. C. Schindler, “The End of

Modernity,” 4.

[3] Cf., e.g., Leo Strauss, *Natural Right and History* (Chicago, 1965), pp. 174-75.

[4] Cf. *The City and Man* (University of Chicago Press, 1978), p. 3.

[5] *Phenomenon of Life*, pp. 195ff.

[6] *A Theory of Justice*, p. 60.

[7] One ironic result is that individual rights tend in fact to become more and more limited by further and further extrinsic definition, as the state increasingly attempts to relativize what are now conceived as merely “biological” relations.

[8] To be very clear, my point is not at all that statistical and other empirical evidence is not valuable for understanding what is going wrong with the sexes, marriage, and the family in our current social situation. Rather, my point is only that, at the end of the day, empirical knowledge—that is to say, our systematic experience and observation of the world—will always end up begging the most important human questions, so long as it is severed from a

deeper metaphysics of the person.

[9] Robert George and Christopher Tollefsen, *Embryo: The Defense of Human Life* (Doubleday, 2008), p. 7.

[10] Martin Rhonheimer, "The Political Ethos of Constitutional Democracy and the Place of Natural Law in Public Reason: Rawls's 'Political Liberalism' Revisited," *The American Journal of Jurisprudence* 50 (2005): 25.

[11] *Ibid*, at 43, 30, and 28.

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# Humanum

Issues in Family, Culture & Science

## FEATURE ARTICLE

### The Gift of Life and Life-Giving Suffering: Understanding Fertility and the Drama of Infertility

JOHN BRUCHALSKI M.D.

*Humanum* is pleased to feature video footage from Dr. Bruchalski's conference presentation.

John Bruchalski: Gift of Life & Life-Giving Suffering: Fertility & Drama of Infertility

*Dr. Bruchalski founded the Tepeyac Family Center in Fairfax, VA in 1994, with the mission of establishing an obstetrical and gynecological facility that combines the best of modern medicine with the healing presence of Christ. In 2000, he founded Divine Mercy Care, a non-profit organization performing spiritual and corporal works of mercy in Northern Virginia, Maryland, and the District of Columbia and is currently the Chairman of its Board of Directors.*



# Humanum

Issues in Family, Culture & Science

## FEATURE ARTICLE

### Modern Families and the Messes We Make

JENNIFER LAHL

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It almost always starts with an emotional story: an infertile couple trying desperately to conceive; a woman diagnosed with cancer, worried she may lose her fertility when she undergoes chemotherapy or radiation treatment and may need to use ‘donor’ eggs in order to have a child; a couple with a dreaded inheritable genetic disease that they do not want to pass on to their children; a sick child in need of a transplant from a ‘savior sibling.’ And now added to the list is the same-sex couple or the single-by-choice person, wanting to conceive and have children biologically related to them. And post-menopausal women, who are not truly infertile, but who can now—with modern technologies—experience the joys of motherhood.

With the birth of Louise Brown in 1978, the world’s first ‘test-tube’ baby, the solution to infertility was seemingly found in reproductive technologies. The beginnings of life moved from the womb to the laboratory, in the petri dish. Here is a glimpse of where we find ourselves today:

- A global multi-billion dollar a year fertility industry feeds reproductive tourism.
- Women old enough to be grandmothers become first time mothers.
- Litter births like Octomom.
- Pre-implantation genetic screening, which is in reality a ‘search and destroy’ mission, the modern face of eugenics.
- Grandmothers carrying their daughters’ babies (their own grandchildren) to term.
- Three-parent embryos: creating children for the first time with DNA from two women and one man.
- ‘New Normal’ families: single-by-choice mothers and fathers, same-sex parents, and parenting partnerships between non-romantically involved couples.

Stanford law professor Hank Greely, in a talk titled “The End of Sex,” made the bold assertion that within the next fifty years the majority of babies in developed countries will be made in the lab because no one will want to leave their children’s lives to nature’s chance.

Indeed, we see a shift away from helping infertile couples have a child to helping adults produce the types of children they desire. The child is no longer a good end in and of itself, but *a consumer product* to be designed—made not begotten—and discarded if imperfect. This is a shift away from a medical model of trying to treat, heal, and restore natural fertility to the manufacturing of babies. In the United States alone we are fast approaching the million mark of frozen babies in the laboratory—so called ‘surplus’ embryos.

But the veneer is coming off, and the realities of these modern solutions to help people have a baby are being exposed.

First, there is the hard data, which continues to show how many fertility treatments fail. The most recent data we have is from 2010, and the Centers for Disease Control and Prevention annual reports show that in the U.S. 100,824 IVF cycles were performed using non-donor eggs. Only 19% of those cycles resulted in a live birth. Over 80,000 of the IVF cycles failed. These figures have not changed significantly over the last 5 years.

Of course this high failure rate only punts the problem to healthy young women who are courted with large sums of money to ‘donate’ their eggs to help make babies. The first recorded birth using donor eggs was in 1983, just 5 years after the birth of Louise Brown. What follows is scandalous. No central registry tracking egg donors and their health over their lifetime exists. (There is precedent for such a registry in the fact that we track living organ donors and organ recipients.) No long-term safety studies have been done to show how many egg donors go on to have complications with their own fertility or to develop cancers that are known risks for women taking the drugs involved. There is no tracking of the children created from donor eggs. And there seem to be no ethical qualms about paying women thousands of dollars to ‘donate’ their eggs, even though we know how coercive money can be and how it works against making truly informed choices.

However, the harms and dangers of egg donation are slowly emerging. Much of my work over the past several years has been gathering and telling the stories of women harmed. Young women, struggling financially, see an ad asking them to ‘be an angel’, ‘make a difference’ or to ‘help make dreams come true’. As one egg donor said, “Who doesn’t want to see themselves like this?” Sadly, she went on and suffered a torsioned ovary a few days after her eggs were harvested. Losing an ovary compromised her fertility. A few years later she developed breast cancer in both breasts, as a young woman with no medical history of cancer. All for a few thousand dollars to help another. My work with egg donors has brought me face to face with the recklessness of the fertility industry, their work to suppress the risks and dangers of egg donation, and their refusal to do any research that would support their claims that egg donation is safe. The truth is, egg donation is risky and in some rare cases can even lead to death.

A few studies have come out touting the successes of egg donation. But when you get past the headlines, what you find is that these successes refer to pregnancy outcomes, not to the health of the woman who ‘donates’ her eggs. A recent issue of the *Journal of the American Medical Association* (JAMA 10/17/2013) devotes space to a new study on egg donation, but it is in the editorial where the truth is found: “data regarding outcomes on oocyte donation cycles have an important limitation—no data on health outcome in donors.”

The practice of surrogacy is becoming more prevalent and more widely accepted as a solution

to helping people have a child. *Time* magazine in 2007 listed “The 10 Best Chores to Outsource” (<http://content.time.com/time/magazine/article/0,9171,1694454,00.html>), and while you would expect to find lawn mowing or housecleaning on such a list, the number one chore to outsource —#1—was pregnancy! Factors driving the rise in the use of surrogacy include the high failure rate of many of the assisted reproductive technologies and the rise of gay parenting, which requires both donor eggs and a surrogate womb. Surrogacy—‘traditional’ or ‘gestational’ —intentionally sets up a negative environment. Instead of encouraging women to bond with their child in utero, for the benefit of both mother and child, surrogacy demands that the mother not bond with her child.

Like egg donation, surrogacy is harmful to both the woman who carries the child and to the child. The health risks to the woman, who must take powerful synthetic hormones to prepare her body to accept an embryo, are real and serious. Most surrogacy contracts require that the surrogate mother already has children as proof that she is able to carry a child to term. However, no one has done any studies on these existing children who observe their mothers keeping some babies and giving others away. The message surrogacy sends to these children seems both clear and dangerous: mommy keeps some of her babies and mommy gives some of her babies away to nice people who can’t have one of their own. And often mommy is paid to do this.

Women who decide to become surrogates are often motivated by the financial gains they are offered. Even the promise of ‘just’ living expenses can be an enticement for a woman of low income with children in the home. Make no mistake: it will not be wealthy women who line up to make themselves available to gestate babies. It will, however, be wealthy individuals or couples who seek to buy such services. Surrogacy takes something as natural as a pregnant woman nurturing her unborn child and turns it into a contractual, commercialized endeavor. As such, it opens the door for all sorts of exploitation.

And what about the children? Are the kids really all right like Hollywood tells us? In all honesty, the verdict is not yet in. This is in reality an unfolding social experiment. But, again, the veneer is coming off. More and more studies are coming out on the risks to children created via assisted reproductive technologies. These risks include higher rates of cancer and of genetic and heart problems. More stories (and more research) are surfacing that mothers *and* fathers are indeed good for children. Family and kinship are real—biology matters and genetics are important.

I often tell egg donors: you didn’t help a woman have a baby; you helped a woman have *your* baby. Even Sir Elton John, who with his partner David Furnish used a woman who sold her eggs and another who rented her womb, has lamented that he is worried about his children growing up without a mother.

While modern reproductive technologies began as what seemed to be good ways to help people who struggle with infertility, from where I sit, we’ve made a real mess. The biggest losers are the poor and vulnerable women who are exploited for, as they say in India, “selling their motherhood.” And, of course, the children are losers too. One little girl, born via a traditional surrogacy arrangement for a gay couple, one day asked her mother a very poignant question: since she looked like her mommy, why is it that her mommy gave her away? In her little mind, she simply could not understand how her mother would do this. The surrogate mother’s response: “I didn’t know what to tell her.” I wouldn’t know what to tell that little girl either. Maybe we should just stop making such messes?

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# Humanum

Issues in Family, Culture & Science

## FEATURE ARTICLE

### Modern Women - Modern Mothers: Resetting the Biological Clock

MARGARET HARPER MCCARTHY

#### Introduction

Let me begin this essay on feminism and Artificial Reproductive Technologies (ARTs) the way most feminists begin their own thinking, by quoting a man. G.K. Chesterton, in one of his essays, challenged the charge of the “equality feminists” of his day that the work specific to women was tedious, small and filled with drudgery, and that they were, therefore, in a condition of inequality with respect to men and their work. He countered, enviously, pointing to its wideness:

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**[W]hen people begin to talk about this domestic duty as not merely difficult but trivial and dreary, I simply give up the question. For I cannot with the utmost energy of imagination conceive what they mean. When domesticity, for instance, is called drudgery, all the difficulty arises from a double meaning in the word. If drudgery only means dreadfully hard work, I admit the woman drudges in the home, as a man might drudge at the Cathedral of Amiens or drudge behind a gun at Trafalgar. But if it means that the hard work is more heavy because it is trifling, colorless and of small import to the soul, then as I say, I give it up; I do not know what the words mean . . . I can understand how this might exhaust the mind, but I cannot imagine how it could narrow it. How can it be a large career to tell other people’s children about the Rule of Three, and a small career to tell one’s own children about the universe? How can it be broad to be the same thing to everyone, and narrow to be everything to someone? No; a woman’s function is laborious, but because it is gigantic, not because it is minute.[1]**

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It is the loss of the ability to see what Chesterton saw that so deeply marks much of feminist thought from its very beginning to our day, and which has made motherhood in particular—be it motherhood *tout court* or motherhood as it concretely presents itself—the obstacle to a woman's equality with men.

### ARTs and Early Feminism

I am aware that there are different feminisms, that there are those who make little of the body (liberal feminism, existential feminism, and radical feminism) and those who want to make much of it (post-modern feminism). These differences notwithstanding, they exist, for the most part, in view of two mutually agreed-upon villains. On the one hand, women have not had their equal share in the kind of work that men have been doing from time immemorial, namely everything that takes place outside of the domestic dwelling: tilling, hunting, mining, forging, building, writing, painting, sculpting, thinking (and let us add raping, pillaging, bombing, drilling, fracking, revolutionizing, and the like). In sum, men have always had, in Virginia Woolf's words a "room of their own" to repair to where they could pursue "their own work," and their own interests free from domestic demands (and noise!). On the other hand, the work that women have done from time immemorial has not only prevented them from these pursuits—unless they managed to get a thought in edgewise and scribble it down hastily on the kitchen counter between meals! This state of affairs has placed them in a position of deep dependence (especially economic) on the man (who, for his part, was "independent," as it is always said). It is the second problem that makes the first problem so pernicious and which lead John Stuart Mill, the first feminist, to conclude that "the family is the school of despotism."

In the attempts to identify the origins of the "subjection of women," much has been said—starting, again, with Mill—about *the role of society* in producing its desired nefarious effect.[2] Simone de Beauvoir's famous tome meant to show us how (and why) "one is not born but rather becomes a woman." [3] It is the work of society, she argued, which instills in girls their place as the "second sex"—as "Other"—defined by, subordinated to, and in function of the first sex. What is more, according de Beauvoir's account—but Mill said it first!—the "construction" of sexual difference is so inconspicuous that it risks not being recognized for what it is. "Patriarchy is so powerful," says one of Simone's more radical followers, "that it has a successful habit of passing itself off as nature." [4] The insistence on this point shows how vehement the denial is (and must always be) that the roots of any of the alleged "inequality" could be found in *nature itself*.

It is hard not to notice, however, how nervous are those who hold the "social construction" theory when it comes to describing the bare facts of life. After making much of the projections of misogyny on the biology of the past—held by men such as Aristotle, and later Thomas Aquinas—according to which the woman contributed little to the newly conceived being, other than a passive nourishing terrain,[5] Simone de Beauvoir passes through the biological facts as we know them now. There are two in particular which she finds disturbing. The first is that, even once biology has discovered the egg, and especially that it contributes equally to the genetic make-up of the new being growing in the woman's womb,[6] this contribution is still embarrassingly "passive" and "closed upon itself," with respect to the "tiny and agile," "impatient," sperm.[7] What is more, in fertilization, the ovum is "violated," and suffers the "onslaught" of the competing sperm.[8] In short, in Simone's description of the birds and the bees, in fertilization, as well as the sexual act itself, the woman has been "*taken*," "*grabbed and immobilized*," "*violated*," and "*alienated*" by another.[9] The second fact is even more intolerable since it is more imposing on the actual life of the woman. It is the fact that she, as compared to all other females in the animal world, is the one *most* absorbed by the fact of maternity since no other progeny takes longer to "stand on its own two feet" than the human child. The human

mother is in the “servitude of maternity.”[10] Indeed the human female body is the *most* problematic for Simone because the demands that her child makes on her are at odds with the fact that she belongs to the species at the top of a chain in which individual members acquire progressively more and more individuality and *ought to be* thereby less subordinated to the reproduction of the species.[11] She writes, “[H]er destiny appears even more fraught the more she rebels against it by affirming herself as an individual.”[12] Simone does not consider the possibility that the co-existence of these facts—the woman’s heightened individuality, on the one hand, and the fact that her child is that much more dependent on her to get on its feet, on the other—might in fact be co-determinative, as does Hans Jonas, for example.[13] Maternity has “no individual benefit to the woman.”[14] For her the human female is simply a living, walking contradiction in terms. It appears then that even for Simone, well in advance of any education or socialization of the famous “girl who will become a woman,” *the problem lies in her body*. It is her body that opposes her existence as a person.[15] We find ourselves at the height of what Robert Spaemann calls modernity’s “insurmountable stalemate” between nature (or body) and person (or freedom) where the bodily “object,” subjected as it is to another’s gaze because of its surface, —to use the terms of Simone’s lover—proves fatal for freedom.[16] It is against nature, and this ultimately – not just that pernicious socialization – that the woman resists and must resist.

She is the most deeply alienated of all the female mammals, and she is the one that refuses this alienation the most violently; in no other is the subordination of the organism to the reproductive function more imperious nor accepted with greater difficulty.

But resistance, as Simone infers, is at the very heart of human nature which is an “antiphysis,” a resistance “against nature.”[17] (It is hard not to notice the *lack of equality* here, since it is primarily *women*, on account of *their bodies*, who have to do most of the resisting. The bodies of *men*, Simone herself notes, are not in opposition to their existence as persons.[18])

One is not left to guess what *kind* of resistance to nature Simone offers to women. It is resistance to *maternity* which for the most part will take the form either of preventing it from occurring altogether or stopping it in its tracks should it occur. (Simone dedicates a chapter in her book to the need for access to contraception and abortion.[19]) But there are hints in Simone’s thought to suggest that it is not maternity *per se* that is the problem, were one able to imagine the possibility of it occurring in a different manner than it does now, with all of its humiliation and tyranny. Indeed in her treatment of the biology of reproduction she strategically presents the great *variety* of reproductive methods occurring in nature so that she can suggest that “the phenomenon of asexual multiplication and parthenogenesis are neither more nor less fundamental than those of sexual reproduction” [20] or that there is nothing to warrant “universalizing life’s specific processes,”[21] lest we infer some normativity in the way we currently reproduce.[22] This is her conclusion notwithstanding the consistent pattern of greater sexual differentiation and involvement of mothers with their young as you follow the *upward moving chain* of animal life in Simone’s own account. And it is a conclusion which serves to clear the way for her clear *preference* for forms of reproduction which occur at the very bottom of the chain: the a-sexual multiplication in bacteria and in protozoa, the hermaphroditic reproduction in plants, annelid worms and mollusks, the fertilization *outside* the female body of fish, toads and frogs (which allows the males to do the “childcare” as much as the females).[23] Never mind the fact that these forms of reproduction occur at the *lowest levels* where there is the *least amount individualization*, the very thing Simone is after. These “alternatives” all offer grist to the mill of the human work of resistance against nature.

Following de Beauvoir, there was one feminist who was willing to finally call a spade a spade and say that the problem feminists have is with biological reality as such. Taking up the

intuition of Engels and Marx, Shulamith Firestone said that all the class antagonisms at the level of society are derived from the biological family which is “an inherently unequal power distribution,” by virtue of the natural reproductive differences and the division of labor they suggest.[24] Firestone shared de Beauvoir’s view of human nature’s stance with respect to its own nature.[25] But, writing twenty years later, she could envision more resources for her older sister’s “antiphysis.” Her science fiction vision of what had to come about in order to fulfill feminist goals is chilling not because of how aberrant it sounds, but because of how normal it has become (and is becoming):

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[J]ust as to assure elimination of economic classes requires the revolt of the underclass (the proletariat) and ... their seizure of the means of *production*, so to assure the elimination of sexual classes requires the revolt of the underclass (women) and the seizure of control of *reproduction*: not only the full restoration to women of ownership of their own bodies, but also their (temporary) seizure of control of human fertility—the new population biology as well as all the social institutions of child-bearing and child-rearing. And just as the end goal of socialist revolution was not only the elimination of the economic class *privilege* but of the economic class *distinction* itself, so the end goal of feminist revolution must be, unlike that of the first feminist movement, not just the elimination of male *privilege* but of the sex *distinction* itself: genital differences between human beings would no longer matter culturally. (A reversion to an unobstructed *pansexuality*—Freud’s ‘polymorphous perversity’—would probably supersede hetero/homo/bi-sexuality). The reproduction of the species by one sex for the benefit of both would be replaced by (at least the option of) artificial reproduction: children would be born to both sexes equally, or independently of either, however one chooses to look at it; the dependence of the child on the mother (and vice versa) would give way to a greatly shortened dependence on a small group of others in general and any remaining inferiority to adults in physical strength would be compensated for culturally. The division of labor would be ended by the elimination of labor altogether (through cybernetics). The tyranny of the biological family would be broken.[26]

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We need not look just to Marxists to find such preferences. We are already aware of the general suspicion of the family in the tradition of liberalism. For Mill the family, being the “school for despotism” that it was, inculcated in its members patterns of thought and action that were incompatible with democracy.[27] Liberals disagree about the extent to which this is necessarily the case; and they disagree about the extent to which the private sphere of the family ought to be subjected to the principles belonging to the public sphere.[28] Nussbaum, for example, faulted Rawls for letting the family and other such “associations” off the hook, so to speak,[29] a fault which he would quickly amend.[30] But there is general agreement that the family is the suspected cause of all the alleged “inequalities” between men and women forbidden in a proper liberal democracy—especially those in the marketplace namely access to

professions, representation in board rooms, and wage equality—since it has long perpetrated against women the “injustice” on account of its “placing on her shoulders” a “disproportionate share of the task of raising, nurturing, and caring for their children.”[31] It thus seems almost *regrettable* when reference is made to the necessary role the family still must play in a liberal society. Says Rawls:

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The family is part of the basic structure, the reason being that one of its essential roles is to establish the orderly production and reproduction of society and of its culture from one generation to the next. [A] political society is always regarded as a scheme of cooperation over time indefinitely; the idea of a future time when its affairs are to be wound up and society disbanded is foreign to our conception of society. Reproductive labor is socially necessary labor . . . the family must fulfill this role in appropriate numbers to maintain an enduring society (emphasis added).[32]

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Now, given the problems inherent in the family, once there are new “means of (re) production,” is there any reason, they should *not* be used? It is hard to imagine what they would be. Indeed they are *assumed* when, again, Rawls continues, saying: “[N]o particular form of the family (monogamous, heterosexual, or otherwise) is so far required by a political conception of justice so long as it is arranged to fulfill these tasks effectively and does not run afoul of other political values.”[33] But we might ask more. Given the problems inherent in the traditional family, as we have known it until five minutes ago, why wouldn’t these new “means of [re]production” become *preferable*, seeing as they are more in line with the political values of liberal democracy?

Now, the desirability of new means of reproduction is obvious when it comes to “other forms of the family.” But they are equally desirable on feminist terms. ARTs, of course, have played a significant role in the lives of the older generation of motherhood-deferring feminists who found themselves turning to fertility clinics in the eleventh hour, when the urge of motherhood finally caught up with them. But now they play a dominant role among young goal-setting professionally oriented women who can strategically *reschedule* motherhood without the nagging tick-tock of the biological clock,[34] while avoiding the terrible plight of the previous generation who had not thought things through and who often left their fertility clinics without the desired results,[35] or with results, but ones bearing all the complications of older eggs.[36] The latest trend in gift-giving to daughters graduating from law school is an example: gift certificates to have their *eggs frozen*, for use at a later date.[37] All of this, together with contraception, of course, allows women to “get their ducks in a row” and achieve an individual autonomous identity, apart from that of a wife and a mother,[38] and *on that basis—especially their childlessness*—to allow them to become the “equals” to men. Sara Richards explains it in her egg-freezing manifesto, *Motherhood Rescheduled*: “Instead of feeling like a victim paralyzed by anxiety, you feel more in command of your own destiny. It is that mindfulness that makes me do what I’m supposed to do to make my life go in the direction I want.”[39] It’s about adopting a “‘take charge’ attitude,” which, she says, “is one of our most fundamental American values.”[40]

Naturally, “take charge” women could avoid motherhood altogether. There are those who promote “ethical childlessness” also for the purpose of women’s equality, among other things.[41] But since most women still do want to be mothers, with the help of egg freezing and

the whole assortment of other ARTs that go with it, they can opt for motherhood *on feminist terms*, that is, at the end of long successful career. To put it in sociological language, instead of motherhood (and marriage), being “cornerstones” of an adult life, which radically define its course, marriage and motherhood will be “capstones,” “crowning achievements,” or “trophies” of a long adult life lived without them. They will be enjoyed, for the most part, but they will not alter the course nor the “equality” which has been achieved on account of their exclusion and controlled admission.

As for the children born to these mothers living for the first time outside of time, their rescheduled births will be “teaching moments,” in line with the very educational horizon of “reproductive labor,” by “ensuring [the future citizen’s] moral development and education into the wider culture...[giving to him or her]...a sense of justice and the political virtues that support just political and social institutions,” as Rawls said.[42] Children will learn their lessons: how to leave their mothers alone, by feeding and caring for themselves. Most importantly their early institutionalization will keep them from noticing the implications of the “misfortune,” of being born, as Locke called it. [43] Or to put it in the words of the current French Minister of the Family, Dominique Bertinotti, their early day care will “wrest from them every possible social, philosophical, familial, and religious determinism.”[44] In time they too will become like their mothers, free and unattached, ending up just where they began!

### The Women and Work issue

At the end of the day, the problem with motherhood for “equality” feminism is that it *comes at the wrong time*, getting in the way of the establishment of an independent subject. This is particularly clear in the recent debate over the women and work. That debate was sparked by a Anne-Marie Slaughter, a Princeton economist appointed to the Obama administration in his first term in office, who stepped down from that job and explained *heretically* in her *Atlantic Monthly* article “Why women still can’t have it all” (July 2012). With an unusual frankness about her desire to be with her teen-age sons, Slaughter committed the unforgiveable sin and admitted to a few *real*—not “socially constructed”—gender differences, chief among which is the fact that women *don’t feel the same way as men do about being away from their children*, notwithstanding the availability of around-the-clock nannies (for women like Slaughter, obviously). “Deep down I *wanted* to go home...[not just] I *needed* to go home,” she says. And citing a recent study which found that women are *less* happy now than they were in 1972, and not only, but *relative to men*, Slaughter, made a sort missionary appeal to women to join her on the “happiness project.” “Let us rediscover the pursuit of happiness, and let us start at home,” she cries, rallying her new sisters.

In her article Slaughter makes an appeal for the “full range of women’s choices” in reverse, so to speak, where the “choices” in question are things like being home for dinner—even making it!—nursing an infant, pushing a child on a swing, watching a baseball game, or sitting down with a troubled teenager, things that involve *being with* one’s children, not just *managing* them. And she does so with a kind of argument—not just “choice,” we might add redundantly. Women are different when it comes to their children, and so are children when it comes to their mothers. This argument comes forward in the *kinds* of solutions Slaughter offered to her own plight and that of her younger sisters: flexible schedules, extensions on the tenure clock, recognition of family hours (dinner time, week-ends), and the long-overdue challenge of the idolatry of work (for everyone, men included). This all seems reasonable. Leaving aside for the moment that *mothers are already working* when they are “just” mothers and homemakers, women are different when it comes to their relation to (outside) work and family. Why not, then, Slaughter argues, make changes in the world of work so that they can contribute to it while not having to “give up on things that define them as women,” as she put it.

Slaughter, of course, is making her confession at the eleventh hour, joining millions of other women who have decided to cast off the expectation of others in the cause of abstract equality. But now, with her in their ranks, they have some authorized relief from all that “fatuous talk” and “airbrushing of reality” associated with “having it all,” as they have told her gratefully. But it wouldn’t last for long!

Any attempt to re-think the terms of the relation between woman and work is met with the most adamant resistance. It questions the unquestionable article of faith that the equality between man and women will be achieved only when women are doing the same things as men, at the same level of intensity and single-minded purpose, and with matching wages. It makes no difference that after decades of education in the curriculum of the “girl project,” young women themselves are deciding not to get on the famous “ladder,” knowing now full well that they *could* get to the top, or deciding to step down from it, like Slaughter—if you call going back to a full-time position at Princeton “stepping down.” It is simply *not allowed* to think that there is anything to this except “stereotypes” perpetuated by malevolent forces in society, by “the man,” so to speak, threatened as he is now by all of the progress towards women’s equality. And any evidence brought forward to suggest that it is better that infants have mothers who nurse and hold them, that small children have mothers who spend *quantity* time with them, that teenagers have mothers close at hand, or that mothers themselves, not doing these things, feel restlessly torn between work and family—all of this is inadmissible evidence. It gets in the way of the project of equality and of its “choice” which is of *one kind and one kind only*.

Facebook’s Sheryl Sandberg made that (one) choice perfectly clear in her book that was rushed to the presses in the wake of the Slaughter article. Her book, *Lean In*,<sup>[45]</sup> and now the many *Lean In* “communities” together with the influential *Lean In Foundation*, enjoins women to resist, in addition to all the external pressures, the *internal* obstacles which cause women to lean out when they have children or start thinking about having them: the “ambition gap,” “the self-doubt,” “leaving before they leave.” These obstacles really do seem to be there, but, these, she says, are nothing but the stubborn psychological effects of those all-pervasive stereotypes. There is nothing objectively *there* in the care of infants, babies, and young children that places anything on a mother that can’t be done by any other interchangeable adult. (After all, she grew up free to roam all over the neighborhood with her siblings and friends without a mother always “hovering about.”) Not even breast-feeding offers her evidence to the contrary. That fact just gets tossed into the realm of the “biological imperative” which does nothing but offer obstacles to be overcome through technological means. Sandberg doesn’t ask why it might be that this “was simply not something my husband was equipped to do.” In the face of this and all other kinds of “obstacles,” there are few questions. Rather, just a lot of *leaning away* from what is staring one right in the face. And all of this reasonless rhetoric so as to encourage women to *lean in*, to choose, that is, the (one) “choice” of the (one) “dream”: a future “without limits,” which for Sandberg is limited to holding a power job, unhindered by children and any remaining un-cooperative fathers.

The limitations of the “choice” and the “dream” it serves are even more clear by the kinds of policy changes that the Sandbergs and others like her want (and don’t want) in order to address the problems of women and work. In her recent book on “*The Conflict*” between feminist goals and certain nagging baby-friendly trends in America, the French feminist Elizabeth Badinter is annoyed by the family-friendly solutions that women such as Slaughter are calling for—the kind that exist in Scandinavian countries and in Germany—because these solutions go in the direction of women opting (sic!) to stay at home more rather than less.<sup>[46]</sup> In Sandberg’s terms they encourage *leaning out*. And since *leaning out* leads to an even greater “salary gap” the overcoming of which is the (one and only) measure of “equality” between men

and women, the only acceptable solutions are those that make it advantageous for women to make the one (good) choice, solutions such as publically or corporately-funded day care (starting at infancy), longer-school days and years, “innovative summer camps,” and tax codes weighted in their favor, things which encourage women to “make the right choice.”[47]

It is important to see that for all the talk about “choice,” there is always only one real acceptable choice for these authors. By way of flipping the terms of the debate around (as well as the burden), the issue isn’t really about whether “it’s ok” for women to work (and not feel guilty about it) —putting aside, once again, the fact that a mother is always already working *as a mother*. It is rather *whether or not she is allowed not to work*—especially not at a power job—and thereby be complicit in “wage inequality.” Obviously, no one would be caught dead saying she couldn’t. If we all are supposed to “chart our own course” that too must be an option, *so long* as it is chosen for no other reason than pure (empty) “choice.” Reasons such as the more powerful leaning of women and children towards more quantity time with each other, tied to the unique capacity of women to conceive, bear, and nurse children —the leading suspects in the “subjection of the woman” —are *not* legitimate. At the very least any social and political encouragement of a “gendered division of labor” —by making it less costly—should be eliminated just to “make sure” it is voluntary (as Rawls suggested). [48] To put it in other terms, the question is if there is any real legitimate and respectable choice for women other than to make common cause with the dominant idea of equality—*equality of sameness*—and serve the ideal household of its regime: a two full-time power career household, in thrall to the corporate economy (for most of its meals and consumer goods) and the State and its institutions for welfare (for the care and education of its A.R.T. assisted late-conceived children). Noting the affinity of “equity feminism” with the industrialized work place, especially as regards the hegemony of “choice,” Christopher Lasch wrote in one of his essays on women:

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**The [feminist] movement recognizes only one choice—the family in which adults work full-time in the [industrialized] marketplace. Its demand for state-supported programs of day care discriminates against parents who choose to raise their own children and forces everyone to conform to the dominant pattern as the irresistible product of social developments analogous to the development of technology, which automatically renders old ways obsolete. The two-career family represents ‘progress,’ and laggards have to fall in line. Such is the logic feminists have borrowed from the marketplace.[49]**

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Let me note quickly here that notwithstanding all the talk about women “having it all,” family *and* work (in a power career), one has very little of the former (if not also, perhaps, of the latter). We know what has become of the home in the “work-life balance” when it is treated to the (one) official choice. It is not the work place that gets short shrift. It does not take much to imagine what becomes of the home when there are two full-time power-job careerists sleeping in the master bedroom. To put it in a nutshell, it becomes a place with nobody in it, where very little happens among those who sleep there, much less with their friends and neighbors. The home itself becomes a shell of its former self. If there is a baby, there is no nursing of the baby (in the well-appointed nursery), no taking walks to the park, no witnessing first steps (at the “wrong time”), no informal neighborhood clubs after school, no gathering of teen-age friends



under watchful eyes, no real cooking (in the gourmet kitchen), no dinners with friends (in the non-existent dining rooms), no neighborly charity for sick friends or new mothers. In short there is no *quantity* time together. And there are definitely no un-organized and un-institutionalized children roaming around neighborhoods freely on bicycles; because there is no longer what Sandberg takes for granted when she did just that: an invisible maternal presence in the background. You really *can't* have it all. And neither, apparently can the children who are now in "safe environments" and "enrichment programs," cared for, for the most part, by "qualified professionals," but rarely by the ones to whom they belong.

But we could also speak about how little real work there is as well. If the home is effectively empty, what is it precisely we are working for? What is striking in Sandberg's book is how she thinks about the careers she has and wishes for all of her *lean in* sisters. It is tautological. The reason to have a career is to have a career, or, at the very most, to "effect change" (i.e. more day care, longer school days and school years) so that other women can have a career to have a career. Nothing is said substantively about the *reason* for work, about what, or whom, it serves. There's no mention even of just making a living for one's own family. Work isn't in *relation* to anything. Even within the work place itself, it is her hope that one day women won't have to play by the "archaic rules" for women of negotiating from the point of view of the common good (using "we" language) and just look out for themselves ("as men do"). Now that the world of work has absorbed the home, Sandberg would take one of the initial feminist projects of domesticating the world to its polar opposite: every woman for herself.[50]

### The "Feminine Genius"

Naturally, women have always worked and always will. The question then is not about whether or not they work, but whether or not the work specific to them counts for work—whether it is "equal" to men's work, that is—and whether or not that work has any relation to whatever work they do beyond that. These are the crucial questions. And their answers will determine to a large extent how and when women will have their children, now that that too is optional.

St. John Paul II is well known for what he had to say on this matter. Referring to the work specific to women, he spoke of the "genius of women," tied to their capacity for motherhood by virtue of which they are "entrusted with the human being in a special way." [51] "A mother welcomes and carries in herself another human being enabling it to grow inside her, giving it room, respecting it in its otherness." [52] Her "genius" is her "sensitivity for what is essentially human." [53] This is why he urged societies not to stigmatize or penalize financially women who do have children if they spend most of their time caring for them, and to ensure that women who do engage in other work have a work schedule so that they don't have to choose between "relinquishing their family life or enduring continual stress, with negative consequences for one's own equilibrium and the harmony of the family." [54] He thought, moreover, that this "genius" belonged to women *as such*, regardless of whether or not they were physical mothers, and that it gave form to all of their activity. For this reason he urged women who engaged in other work to do so *from the point of their motherhood* (physical or spiritual) and thereby humanize structures which risk, more than ever, to dehumanize man, subordinating him to the norm of usefulness. [55] We might call to mind here the many women of the "maternalist movement"—all in the Democratic party—many of whom entered public life, and assumed positions of responsibility in the government of Franklin D. Roosevelt. These women promoted things that had as their horizon not androgynous individuals, but men and women as actual or potential fathers and mothers, together in a home with children. Pushing back against the industrialist tendencies to flatten these distinctions in the meat grinder of "equality" (of sameness), they saw in the distinct needs and responsibilities of men and woman

*a bond to be strengthened*, not relaxed. To *that* end they proposed changes to tax and labor law—including the family wage and “mother’s pensions” for widows—and established countless institutions and campaigns that promoted motherhood and home life.

The rediscovery of the “feminine genius” by John Paul II, and by Chesterton and the “maternalists” before him, is refreshing to many women, for many reasons, not the least of which is that it puts the finger on something deeper than mere (empty) “choice.” It names what they experience, even when—especially when—they are exerting so much energy to stifle it, by *leaning in*. [56] Their “experience of deprivation,” as George Grant would call it, has in many ways opened them up to another way of thinking about equality along the lines of the “feminine genius.” This is clear in the recent book *Cracked Open* [57] written by Miriam Zoll—who, among other things, worked for Planned Parenthood and served on the board of *Our Bodies Ourselves*.

Describing her independent, driven, and motherless life, up until forty, she writes:

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**By the time I turned forty, my career had become the center of my life and my purpose for living. It was the identity by which I measured my value and my worth...I began to feel the first pangs of motherhood. I was very careful to submerge these sensations, placed them far out of view behind all the other 'important' deadlines I needed to meet.[58]**

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After Zoll succumbed to those “sensations,” knocked at the fertility clinic, and left empty-handed. She writes:

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**[J]ust because the doctor appointments, the injections, the egg transfers, and the dashed hopes are over, it does not mean that the trauma is over. The sense of violation that many women say they still feel years later, coupled with the deep, deep sadness of not having borne a child, lingers in our lives like a persistent mosquito buzzing in a dark room.[59]**

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There are other “deprivations” associated with the fertility clinic, even if one doesn’t leave empty handed. There are sex-less procedures, degrading “collections” and “reproductive tourism” (looking for surrogate mothers). [60] Then too there are also the concerns of those who left the clinic with the desired results but are noticing alarming trends in the children they brought into the world in this way. [61] In the end Zoll makes a confession that would have de Beauvoir organizing a protest in her grave:

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**Ironically, for the first time in my life I had actually wanted my identity to be defined by my female biology. I wanted my daily routines to be dictated by an**

There are many such confessions from feminists such as Zoll showing how much nature has come back to bite them, as they stood over it resisting it as de Beauvoir had advised. One would think that we have learned our lessons. But just as the alarms have started to ring there is a new resurgence of the old line supported this time with political force, such as the new health law which promotes delayed motherhood through the “right to contraception” *on the grounds of* “furthering the governmental interest in promoting gender equality.”[63] (We can presume a similar “right” to ARTs on those same grounds). There are also the other long-desired policy moves in the wings, policies to keep women from *leaning out*, when motherhood finally does come along. They are usually buried in claims about the educational needs of children, even babies. All of these moves will enable and entrench habits of *leaning in* by making motherhood easier to delay, more successful when it is finally entertained, and making it a negligible factor in the concrete life of a woman, when the desired baby finally arrives and has to be fed and cared for. It will make it harder for young women, therefore, to see that the issue is not just a matter of being more technologically strategic than their anguished fore-sisters, but of re-considering the whole feminist project root and branch, that calculating, lonely, and sterile project of “making our lives go in the direction we want.” We can only hope, then, that nature will bite back...again....and that there will be witnesses of a happier way: throwing oneself no holds barred into what Kierkegaard called the “most important voyage of discovery a human being undertakes,” [64] immersing oneself in life, with all of its twists and turns and all the necessary adjustments along the way.

[1] *What's Wrong with the World* (San Francisco: Ignatius Press, 1910), 94-95.

[2] The “nature-nurture” question is a constant thread throughout J.S. Mill’s *Subjection of Women* (<http://www.earlymoderntexts.com/pdfs/mill1869.pdf>). Nature, according to Mill, being open to influence (*Subjection*, 12-14) can hardly been known for what it is. One would need to “subtract” whatever *could* be attributed to education in order to do so (*Subjection*, 13, 40). What is more, notwithstanding nature’s “openness” to nurture, the influence of the latter on the former is regarded by Mill to be of the pernicious kind, keeping nature in an “unnatural state” (*Subjection*, 33).

[3] Simone de Beauvoir, *The Second Sex* (New York: Alfred A Knopf, 2010), 283. Also, “woman” is a reflection of “what humanity has made of the human female” (48).

[4] Cf. Kate Millet, *Sexual Politics*, 58.

[5] *The Second Sex*, 23, 26, 27

[6] The *equality* of the contribution of the egg, vis-à-vis that of the sperm, is all the more evident today. Cf. especially Stephen Talbott’s “The Embryo’s Eloquent Form,” *The Nature Institute*, March 18, 2013. <http://natureinstitute.org/txt/st/mqual/embryo.htm>

[7] *The Second Sex*, 28.

[8] Talbott’s account of embryology (cf. n. 9, above) corrects the usual picture which Simone is referring to, that of the egg suffering “the competitive sperm cells struggling aggressively to win the prize,” and “breaking into” the sperm. According to Talbott, embryology now suggests

something of a “courtship” involving “intimate chemical exchanges and signalings *between the sperm and the egg* aided by the other sperm cells” (“The Embryo’s Eloquent Form”).

[9] *The Second Sex*, 35-36.

[10] *The Second Sex*, 35.

[11] *The Second Sex*, 31

[12] *The Second Sex*, 44.

[13] *The Imperative of Responsibility* (Chicago, Illinois: The University of Chicago Press, 1984), 130-35.

[14] The lack of benefit begins with de Beauvoir’s description of pregnancy as *alienation*: “Woman experiences an even stronger alienation when the fertilized egg drops into the uterus and develops there; gestation is, of course, a normal phenomenon that is not harmful to the women if normal conditions prevail: certain beneficial interactions develop between her and the fetus; however...gestation is tiring work that offers woman no benefit as an individual but that demands serious sacrifices. (*The Second Sex*, 42).

[15] “Crises of puberty and of the menopause, monthly ‘curse,’ long and often troubled pregnancy, illness, and accidents are characteristic of the human female” (*The Second Sex*, 44).

[16] Robert Spaemann, *Essays in Anthropology* (Eugene, Oregon: Cascade Books, 2010), 5.

[17] Beauvoir suggests this when she says: “But the definition of man is that he is a being who is not given, who makes himself what he is...man is not a natural species: he is a historical idea. Woman is not a fixed reality but a becoming; she has to be compared with man in her beginning; that is, her *possibilities* have to be defined...”, and it is in her becoming that she should be compared with man; that is to say, her *possibilities* should be defined” (45).

[18] “The male, by comparison, is infinitely more privileged: his genital life does not thwart his personal existence...” (*The Second Sex*, 44).

[19] *The Second Sex*, 524-70 (“The Mother”).

[20] *The Second Sex*, 26.

[21] *The Second Sex*, 26.

[22] *The Second Sex*, 26.

[23] *The Second Sex*, 29-31.

[24] Shulamith Firestone, *The Dialectic of Sex*, p. 9

[25] “The ‘natural’ is not necessarily a ‘human’ value. Humanity has begun to transcend nature: “We can no longer justify the maintenance of a discriminatory sex class system on grounds of its origins in nature. Indeed, for pragmatic reasons alone it is beginning to look as if we *must* get rid of it” (*The Dialectic of Sex*, 10).

[26] *The Dialectic of Sex*, 11.

[27] Mill, *The Subjection of Women* (1869), ch. 2, 283-98.

[28] Tocqueville, unlike Mill, for example was not in the least bit disturbed at the stark opposition between democratic practices in public, and the undemocratic ones in the home, at least so far as the division of labor between men and women were concerned. See his *Democracy in America*, trans. H. C. Mansfield and D. Winthrop (Chicago: The University of Chicago Press, 2000), II, III, 8-12.

[29] Martha Nussbaum, "The Feminist Critique of Liberalism," in *Sex and Social Justice* (Oxford: Oxford University Press, 1999), 65.

[30] Cf. J. Rawls, *Justice as Fairness. A Restatement* (Cambridge, Massachusetts: Harvard University Press, 2001), 163, and *Political Liberalism* (New York: Columbia University Press, 1993), 471.

[31] J. Rawls, *Justice as Fairness*, 166.

[32] *Justice as Fairness*, 162.

[33] *Justice as Fairness*, 163. Cf. also *Political Liberalism*: "[T]he government would appear to have no interest in the particular form of family life, or of relations among the sexes, except insofar as that form or those relations in some way affect the orderly reproduction of society over time" (457).

[34] Sara Elizabeth Richard, *Motherhood Rescheduled. The New Frontier of Egg Freezing and the Women Who Tried It* (New York: Simon & Schuster, 2013).

[35] Cf. Fleming, *Motherhood Deferred* (New York: G.P. Putnam's Sons, 1994) and Zoll, Miriam, *Cracked Open: Liberty, Fertility, and the Pursuit of High Tech Babies —A Memoir* (Massachusetts: Interlink Publishing Group, Northampton: Massachusetts, 2013).

[36] Judith Schulevitz, "How Older Parenthood Will upend American Society," *New Republic* (December 6, 2012).

[37] <http://julieshapiro.wordpress.com/2013/04/29/for-t...>

[38] "Knot Yet," 26.

[39] Richards, Sarah Elizabeth. *Motherhood, Rescheduled: The New Frontier of Egg Freezing and the Women Who Tried It* (New York: Simon & Schuster, 2013), 243.

[40] *Motherhood Rescheduled*, 10.

[41] The French feminist E. Badinter, in particular, advocates for such childlessness (*The Conflict: How Modern Motherhood Undermines the Status of Women* (New York: Metropolitan Books, 2012), 141.

[42] *Justice as Fairness*, 162

[43] *The Second Treatise of Government*, VI. 56.

[44] Cited by Mons. Jean Lafitte, "Is Religious Freedom Possible in a Liberal Culture?" Washington, DC. Feb 22, 2013, [http://www.familiam.org/pcpf/allegati/4200/Laffitte\\_speech.pdf](http://www.familiam.org/pcpf/allegati/4200/Laffitte_speech.pdf), 11.

[45] Sheryl Sandberg, *Lean In. Women, Work, and the Will to Lead* (New York: Alfred A. Knopf, 2013).

[46] E. Badinter, *The Conflict*, 136, 159.

[47]All of this is in step with the N.O.W. who has a history of countering such measures and, going back further, with the equity feminists who made their beds with the industrialists by helping them oppose laws against child labor and the protection of women from industrial abuse, thereby giving them a whole new pool of unencumbered, efficient workers.

[48] Proposals in the realm of tax law and social welfare regarding day-care, school hours and days, are offered, to push against the natural tendencies towards a sexual division of labor, and make sure, that where it still exists—it is not *actually* forbidden after all! —it exists for purely *voluntary* reasons. Writes Rawls: “To say that this division of labor is in this case fully voluntary means that it is adopted by people on the basis of their religion, which from a political point of view is voluntary, and not because various other forms of discrimination elsewhere in the social system make it rational and less costly for husband and wife to follow a gendered division of labor in the family” (*Political Liberalism*, 472). See also Anthony Giddens who insists on the same point in *The Transformation of Intimacy* (Stanford, California: Stanford University Press, 1992), 195.

[49] *Women and the Common Life: Love, Marriage and Feminism* (New York: W.W. Norton and Co, 1997), 118.

[50]We should also mention here the logic of corporate institutions themselves. As Lasch said, institutions “have a life of their own quite independent of the qualities of the people who manage them,” making it difficult for non-“lean in women” to make the work-place as we know it more family friendly (*Women and the Common Life*, 116).

[51] *Mulieris Dignitatem*, 30.

[52] *Evangelium Vitae*, 99.

[53] *Mulieris Dignitatem*, 30.

[54] CDF, *On the Collaboration of Men and Women* (2004), 13

[55] *Letter to Women*, 2

[56]The rediscovery of the “feminine genius” must, of course, include other rediscoveries. Writing about the sexual division of labor in *Women and the Common Life*, Christopher Lasch points to the real problem that set up the contemporary devaluing of the feminine genius at home and the jettisoning of it altogether in the work place. He credits Betty Friedan for putting her finger on it in her *Feminine Mystique*. Friedan’s point, says Lasch, was not so much to tell women to get out of the house and get a job, but rather to consider what had become of the home and the situation women now found themselves in for the first time—in the new version of the “stay at home mother.” When the suburbs were created, said Friedan, the “traditional family” came into being as an entity now fully cut off from the world of culture and work; and it dwelt in a home that was now the full expression of the “haven in the heartless world” it had become at the beginning of the Industrial Revolution. As for that home, not only did it stand at a distance from the centers of culture and work, it was not itself centered around any other meaningful hub—churches, town halls, greens—other than the shopping mall. Add to that the fact that the house itself had little land on which to grow food, and no work spaces in which to can and store it, or make anything else for that matter that was truly needful, much less to operate a cottage industry of any sort, and you had the recipe for the “comfortable concentration camp,” and the *ennui*, loneliness, and “nameless

dissatisfaction” that so often filled it. Lasch connects the problem identified by Friedan to the general problem of the new economy which had “no other object than to keep people at work and thus to sustain the national ‘capacity to co

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