SURROGACY: A CATHOLIC PERSPECTIVE

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A few prenotes are in order prior to my substantial presentation. First, I have entitled my remarks a Catholic perspective, not the Catholic perspective. I do this not because there is not an official Catholic perspective. There is. It is presented briefly in Donum vitae ("Instruction on Respect for Human Life in its Origin and on the Dignity of Procreation").1 Rather, I do it because the theologian's task is not simply to repeat official formulations, but to assimilate them critically so that the very assimilative effort contributes to the purification of these formulations. To say anything else would be to wrap these formulations in a non-historical immobility that is untrue to reality.

Second, "a Catholic perspective" means to underline the fact that the perspective is not merely presented by a Catholic, but is one that attempts to draw on the riches and worldview identified with an historical believing community. As we say in theological shorthand, "reason informed by faith." This is not to suggest that all Catholics will or must share these analyses and conclusions. Nor is it to suggest that non-Catholics will not or cannot share them. It simply means that "Christ . . . through his life, death and resurrection has given a new meaning to human existence,"2 and that this meaning will shape our consciousness as we deliberate together about what is morally appropriate human conduct.

A sound Catholic methodology will begin by stating its criterion of judgment when dealing with new technologies. Vatican II is of great help here. Dealing with marital morality, it stated that the "moral aspect of any procedure . . . must be determined by objective standards which are based on the nature of the person and the person's acts."3 The official commentary on this wording noted two things: that in the expression there is formulated a general principle that applies to all human actions, and that the choice of this expression means that "human activity must be judged insofar as it refers

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to the human person integrally and adequately considered."\(^4\)

I fully accept this criterion. Indeed, I take responsibility for its use in the American Fertility Society's *Ethical Considerations of the New Reproductive Technologies*.\(^5\) That document stated:

'Integrally and adequately' refers to the sum of dimensions of the person that constitute human well-being: bodily health; intellectual and spiritual well-being, which includes the freedom to form one's own convictions on important moral and religious questions; and social well-being in all its forms: familial, economic, political, international and religious. Actions (policies, laws, omissions, exceptions) that undermine the human person, integrally and adequately considered, are morally wrong. Actions that are judged to be promotive and supportive of the human person in the sum of his or her essential dimensions are morally right.\(^6\)

The document notes of this criterion that "in principle it calls for an inductive approach based on experience and reflection." I note here that *Donum vitae* reproduced this personal criterion. Repeatedly it refers to the integral good of the human person, or some such phrase. In this sense it is one with Vatican II. One may legitimately question, however, whether *Donum vitae* actually uses this criterion when it draws concrete conclusions about reproductive technologies.

Now let us turn to surrogacy. At the very outset we should distinguish surrogate gestational mothers from surrogate mothers. A surrogate gestational mother provides the gestational but not the genetic component for reproduction. A surrogate mother provides both the female genetic component and the gestational component. Once this distinction has been made it may be temporarily shelved because most of the ethical pros and cons apply quite similarly to both forms of surrogacy. One can see this by reviewing the American Fertility Society's document on surrogacy.

There are at least two general approaches to our subject that can be identified. The first views surrogacy under the rubric of the use of third parties *in genere*, as but a single example of a general practice. The second views surrogacy *in specie* and underlines the advantages and drawbacks of this specific instance of third party usage.

**THIRD PARTY PARTICIPATION IN GENERAL**

Under the title of "third party participation" several different

\(^5\) Fertility and Sterility, vol. 53, n.6, 1 S (Supp. 2 1990).
\(^6\) Cf. id.
procedures are possible: donated sperm, donated ovum, donated embryo, donated uterus, or combinations of these. Most discussions have centered around donated sperm (AID-artificial insemination by donor) because this is by far the most common of these procedures; so I will use it to review some of the issues of third party participation in reproductive technologies.

The most thoughtful and stimulating recent study on AID is that of Paul Lauritzen. Lauritzen examines some contemporary works on AID. One is by Lisa Sowle Cahill. Cahill rejects third party participation in reproductive technologies because they separate genetic and social parenthood. There are moral responsibilities that are directly contingent on genetic connection. They are inalienable and cannot be completely transferred to others. Thus, in Lauritzen's words:

Thus it could never be morally acceptable to create a child with the intention of separating genetic and social parenthood, for to do so would require an individual to create a set of moral obligations he or she had no intention of discharging.

For Cahill, the responsibilities of parenthood do not root entirely in human choice. They root also in biological genetic connections. For this reason, "biological relationships can and should exercise some constraints upon freedom to choose (or not to choose) the parental relation." And for Cahill, biological restraints restrict the freedom to choose AID and surrogate motherhood.

Lauritzen criticizes this view on the ground that it assumes that to separate genetic and social parenthood is to abandon all constraints on reproductive choice. As he says:

Yet in disagreeing with Cahill about the normative ideal, I am not abandoning all restraints on reproductive choice. Rather I am simply drawing the line of acceptable choice at a different place.

What is not clear to me in Lauritzen's fine study is where he is drawing the line and above all why. The major ethical obstacles he sees to the responsibility of parenthood in AID are secrecy (deception at the heart of the parent-child relationship) and the problem of

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9. Lauritzen, supra note 7, at 64.
10. Cahill, supra note 8, at 65.
11. Lauritzen, supra note 7, at 65.
asymmetry. When dealing with secrecy, he cites the work of Baran and Pannor:

For most of the men we interviewed, the choice of donor insemination had been an acute response to the pain they were experiencing. They never permitted themselves the time and opportunity to explore their feelings about the devastating ego blow. They prevented themselves from becoming comfortable with and accepting of their handicap. Instead, they cast the handicap in concrete, and their feelings of inadequacy were continuously reinforced by visual proof: their donor off-spring.

With this enormous deficit in place, the relationship between the husband and wife had to be realigned. The husband became weaker and more passive; the wife became stronger and more powerful. The wife was the real mother of the children, and this message, although never spoken, was clearly given to the husband in many ways. The husband could be devoted and caring toward the children, while, at the same time, recognizing the difference between his parental role and his wife's.\(^\text{12}\)

Lauritzen seems to treat this scenario as a problem of secrecy and therefore one that could be dispersed by candid revelation and discussion. Actually, I believe it will be seen by many as an intrinsic problem and as inseparable from AID itself whether secrecy is there or not. Whatever the case, if secrecy and asymmetry are the two obstacles to responsible parenthood in using AID, and if both can be overcome, it is not clear where and why Lauritzen would “draw the line of acceptable choice.”

This exchange between Cahill (emphasizing the basic importance of genetic connections) and Lauritzen (emphasizing the superior importance of the parenting function) is a kind of symbol of the way the ethical discussion is conducted.

For instance, Donum vitae regards the use of third party gametes as “a violation of the reciprocal commitment of the spouses and a grave lack in regard to that essential property of marriage which is its unity.”\(^\text{13}\)

How is this unity to be understood? There are at least two possibilities. The first is at root nonconsequentialist in character. It appeals to the nature of marriage — or at least that is how I read Donum vitae’s presentation of the argument. After noting that the


child must be the fruit and sign of the mutual self-giving of the spouses, of their love and fidelity, it states: "The fidelity of the spouses in the unity of marriage involves reciprocal respect of their right to become a father and a mother only through each other."14 A certain notion of marriage as exclusive at all levels seems to undergird that statement, though I admit that if one pushes hard enough (e.g., "Why must unity be so understood?") one gets to consequentialist considerations.

The second possibility is that of Lauritzen. AID introduces life experiences that cannot be fully shared and "this lack of mutuality may interfere with the couple's ability to care for and to love the child that is created."15 But is this disunity an overwhelming obstacle? Lauritzen thinks not.

At this point, I would like to introduce a consideration I have rarely heard discussed. It will be recalled that Donum vitae rejected any reproductive technology that is a substitute for sexual intercourse. My own experience with couples who have undergone IVF and ET (in vitro fertilization with embryo transfer) is that they do not regard these procedures as a substitute for sexual intimacy, but as a kind of technological continuation or extension of it. Now if that is indeed the case, then we must ask: Is it appropriate for third parties to be involved in such continuation?

Let me summarize here. There are two key issues on which there is likely to continue to be strong disagreement: (1) Does third party involvement (via gametic donation or surrogate gestation) infringe on conjugal exclusivity? and (2) Does having a jointly raised child justify such infringement? My own answers are yes to the first, no to the second. I hold these positions because I believe the notion of conjugal exclusivity should include the genetic, gestational, and rearing dimensions of parenthood. Separating these dimensions (except through rescue, as in adoption) too easily contains a subtle diminishment of some aspect of the human person.

To argue that marital exclusivity ought to include the genetic, gestational, and rearing components can be argued in at least two different ways. First, it can be argued that third party involvement is itself violative of the marriage covenant independent of any potential damaging effects or benefits. This is the thrust of Lisa Cahill's analysis, as well as that of Pius XII. The view might be argued in purely ethical terms (Cahill) or in religious terms. An example of the latter is the distinguished Paul Ramsey. He writes: "To put radically asunder what God joined together in parenthood when He made love pro-

14. Id. supra note 7, at 23.
15. Lauritzen, 72.
creative, to procreate from beyond the sphere of love... or to posit acts of sexual love beyond the sphere of responsible procreation (by definition, marriage) means a refusal of the image of God's creation in our own."^{16}

As I just noted above, there is a simpler way of making this point. Many couples regard in vitro fertilization not as a replacement for their sexual intimacy, but as a kind of continuation or extension of it. On that view, third party presence (via egg or sperm) is presence of another in the intimacy itself, a thing that ought not to be. One need not call this adultery to make the point.

The second form of the argument is that any relaxation in marital exclusivity will be a source of harm to the marriage (and marriage in general) and to the prospective child. For instance, the use of donor semen means that there is a genetic asymmetry in the relationship of husband and wife to the child, with possible damaging psychological effects. If a surrogate mother is used, then conflicts could arise that damage both the marriage and the surrogate.

William J. Winslade and Judith Wilson Ross recently raised some of the questions I have in mind, including:

Is the child to know about the method of its birth? If so, how much information should the child have — only that which is deemed to be health-related data, or all of the other biological information about its heritage that most of us value? Whose interests, whose preferences, whose needs count here? Born into a society that is already fragmented by divorce and confused about alternative life styles, morals and sexual choices, the child may well have serious identity problems at a later time. Does such a possibility have to be seriously considered by those who want to undertake unusual reproductive methods?^{17}

The Winslade-Ross essay concludes: "The interests and well-being of the baby-to-be-made seem to be the last issues considered, and sometimes (when physicians promise anonymity to the donor or parents require it of the surrogate) seem not to be considered at all."^{18}

Another form of this first approach is the assertion that third-party involvement separates procreation from marriage in principle. That opens the door, both by human proclivity and the logic of moral justification, to a litany of worrisome problems such as single-women insemination and insemination of a lesbian couple.

An argument built on possible harmful consequences is one sub-

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^{17} Winslade and Ross, *N.Y. Times*, Feb. 21, 1986, 27.

^{18} Id.
ject to empirical verification. It must be admitted in all honesty that the data are thin at best, often even conjectural. Fears of what might happen once marital exclusivity is relaxed are legitimate even if they do not always lead to clearly established absolute prohibitions. In the past I have argued that the risks and potential harms involved would support a safeside moral rule (procreation should be restricted to marriage at all levels — genetic, gestational, and social) against the slide to abuse. This is a prudential calculus which gives greater weight to institutional risk of harm than to individual benefit.

SURROGACY IN SPECIE

There are two levels at which one might approach this problem, the individual and the social. By “this problem” I am referring to surrogate motherhood, not surrogate gestation only because the circumstances for this latter are likely to be extremely rare.

First, the individual level. I will simply list here some of the concerns noted by the American Fertility Society (“AFS”). The AFS report lists potential harms under these categories: the surrogate, the couple, and the child.19

1. The surrogate.
   —Physical hazards in carrying a pregnancy for other persons.
   —Psychological harm in giving up one’s own genetic child.
   —Exploitation of the surrogate, especially if she is poor.

2. The couple.
   —Woman could be harmed by not having access to medical advice that could help her solve infertility in other ways.
   —Risk of harassment from surrogate.
   —Continued involvement of surrogate could harm couple’s relationship.
   —Financial risk to couple because of uncertain legal status of the procedure.
   —Pain if surrogate decides to keep the child.

3. The child.
   —Child could be physically harmed by a surrogate’s genetic defect.
   —Surrogate who knows she has no rearing responsibility might be careless during pregnancy.
   —Concerns about child’s sense of identity and clarity about parenthood.

The benefit to be expected is that a surrogate arrangement would allow the otherwise infertile (because of lack of a uterus, for

example) couple to rear a child with a genetic relationship to one of them.

Weighing the pros and cons of this procedure, the AFS ethics committee concluded that if surrogate motherhood is to be pursued, then it should be "pursued as a clinical experiment." By this the committee meant to designate "an innovative procedure that has a very limited or not historical record of whether any success can be achieved." Being a member of this committee, I can confidently assert that this is about as close as the committee would come to outright condemnation. Indeed, committee member C. Alvin Paulsen stated his dissent by noting that "the risk/benefit ratio of the surrogacy procedures does not justify their support."

There is one important aspect of surrogate motherhood that should be noted: The potential harms are inherent in the procedure. They are not the result of inadequate protocols, etc. This point has been noted by others.

Now let me turn to the social level. There will naturally be some overlap here with considerations already mentioned. At the time of the Baby M. case, Daniel Callahan wrote: "We are caught in the middle of a major social experiment without the faintest idea how it should be conducted. The case reveals why the attendant problems are so hard and why surrogate motherhood was probably a bad idea from the outset." By the "attendant problems," Callahan refers to the kinds of problems our society would be better without. He refers to three above all. 1) Surrogacy represents yet another mode of producing children that is less than desirable, and at a time when we are not underpopulated. 2) We court confusion about parentage with the accompanying uncertainty about responsibility for the welfare of the child. 3) We introduce a cadre of women whose prime virtue is what we now take to be a vice — "the bearing of a child one does not want and is prepared not to love."

These considerations of Callahan's open another issue of social concern: The impoverishment of women by their reduction to their child-bearing capacity. I find it difficult to see how any surrogacy arrangement does not reduce a woman to a means. Considerations like the above led me to entitle the only article I have written on this

20. Id. at vii.
21. Id. at 73 S.
22. For example, K.H. Rothenberg, "Gestational Surrogacy and the Health Care Provider: Put Part of the 'IVF Genie' Back into the Bottle," Law, Medicine and Health Care 18 (1990), 345-52 n. 38.
24. Id.
subject "Surrogate Motherhood: a Still-born Idea."25

One response to this presentation might well be: How is this a Catholic perspective? What makes it Catholic? Could not any humanist espouse a similar analysis? Such questions reflect a misunderstanding about the nature of moral reflection in the Catholic community. This reflection has never yielded to the sometimes comforting enticements of sectarianism, as if "Catholic" contained an implied reference to a secretum arcani in the moral sphere.

It is here that I return to the criterion of the person integrally and adequately considered. If that is truly the appropriate criterion, as I believe it is, then whatever will throw light on the impact of the reproductive technologies on the well-being of persons is necessarily part of human reflection on the matter. The Catholic church, with its centuries-old tradition of natural law in moral matters, is quite comfortable with Agunias' saying that "we offend God only in so far as we offend our own good."26 If surrogate motherhood offends — on balance — our own good as persons, then Catholics would reject it. I believe they should.

CURRICULUM VITAE
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Teaching of Medical Ethics, Love and Society, An American Catholic Catechism, Ministering to the Divorced Catholic, Personal Values in Public Policy, etc.

Father McCormick is a past president of the Catholic Theological Society of America; past member of the Board of Directors of the American Society of Christian Ethics; past member of the Board of Trustees of the University of Detroit and of Fairfield University; member of the Catholic Commission on Intellectual and Cultural Affairs; past member of the Board of Directors and Treasurer of the Churches' Center for Theology and Public Policy; past member of the Ethics Advisory Board, Department of Health, Education and Welfare; Fellow of the Institute of Society, Ethics and the Life Sciences (Hastings Center); past associate editor of America magazine; editorial advisor for Theology Digest and Hospital Progress; member of the Editorial Board of the Journal of Religious Ethics; member of the Editorial Board of Fetal Medicine; member of the Editorial Board of the Journal of Contemporary Health Law and Policy; member of the Special Bioethics Committee, American Hospital Association; member of the Bioethics Committee of the National Hospice Organization and the Catholic Health Association; member of the Ethics Committee of the American Fertility Society.


Appearances: Today, Nightline, Meet the Press, etc.

In 1969 Father McCormick was awarded the Cardinal Spellman Award by the Catholic Theological Society of America as “Outstanding Theologian of the Year.” In 1988 he was given the Henry Knowles Beecher award from the Hastings Center for “lifetime contributions to ethics and the life sciences.”

Honorary Degrees:

University of Scranton, Pennsylvania (1975)
Wheeling College, Wheeling, West Virginia (1976)
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Siena College (1985)
University of Louvain (1986)
Holy Cross College (1986)
Seattle University (1987)
Fordham University (1988)
Xavier University (1988)
Loyola University of Chicago (1989)
University of San Francisco (1989)
Georgetown University (1990)
Catholic Theological Union, Chicago (1991)
In 1990 he was elected to membership in the prestigious American Academy of Arts and Sciences.
His father, the late Dr. Edward J. McCormick, was president of the American Medical Association.
Fr. Richard A. McCormick, S.J.
Partial Bibliography Listing

Fr. Richard A. McCormick, S.J. has an extensive bibliography starting from 1952. Due to space limitations, the bibliography included here is only a partial listing of works dating from 1975 through 1989.

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