ON REGULATING IVF

Francis Etheredge

The in vitro fertilization industry is generally unregulated in the United States, although individual states have enacted laws trying to rein in some of the more flagrant abuses of the practice. The weakness in the American system is the failure to protect the rights of experimental subjects, first expressed in the 1949 Nuremberg Code and again in the 1979 Belmont Report, which emphasized the need to protect those with diminished responsibility. Who is more vulnerable to mistreatment than the unborn?

An entirely different approach has been taken here in Great Britain, where the national government regulates the production and use of human embryos. There are advantages to the British practice: it encourages scientists to publicize what they propose to do; it can focus the public on the objective good or harm of a particular proposal; and it makes it easier to identify the currents of thought which contribute to the political advocacy of IVF.

This is also a more dangerous approach than the one found in the United States, because it assigns power over the entire industry to a single advisory body, the Human Fertilisation and Embryology Authority (HFEA). This body can give the sanction of statutory law to practices that transgress the moral implications of the truth and, therefore, discredits the law and political process of the country. Furthermore, legalization sanitizes the cultural abandonment of the unborn and helps to accommodate consciences to practices that contravene the gift of life. Louise Brown, the first child brought to term through IVF, is a living reminder that each human embryo that is experimented on is a person. Any relationship not based on the principle of the person-as-gift denies the reality of equality between all of us.

Regulation in Great Britain

According to the HFEA’s own account, the birth of Louise Brown, in 1978, contributed to a growing need to establish a committee “to inquire into the technologies of in vitro fertilisation and embryology.” Thus, a committee was established in 1982 with the task “to develop principles for the regulation of IVF and embryology.” The committee was chaired by the philosopher Mary Warnock, and the report it produced in 1984 came to be known as the Warnock Report. The committee called for a “regulatory authority with the remit of licensing the use in treatment, storage, and research of human embryos outside the body.”

In 1987, almost ten years after the Warnock Report, the publication of a white paper led to the Human Fertilisation and Embryology (HFE) Act. This act, made law in 1990, provided for the establishment of the HFEA, “an executive, non-departmental public body, the first statutory body of its type in the world.” The act provided the statutory basis to license the creation of human embryos outside the body, their use in treatment and research, the use of donated gametes and embryos, and the storage of gametes and embryos.

The Flaw in the Foundation

A precept of the Warnock Report was that “there is no particular part of the developmental process that is more important than another; all are part of a continuous process.” In response, the Catholic Bishop’s Joint Committee on Bio-Ethical Issues of Great Britain said that “our society should resolve to protect the life of the human embryo precisely from the beginning of its continuous development, ie, from conception (fertilization).”

Although the logic of the Warnock Report entailed the protection of the life of the human embryo from its very beginning, at conception (fertilization), it did not call for that protection. What emerged was not the Warnock Report’s failure to grasp human reality but its failure to recognize the ethical implications of the continuous manifestation of the person. The report thus built this flaw into the foundations of the the HFEA and the HFE Act.

The Goal of Regulation

The goal of regulation is a laudable one and intrinsic to social collaboration. It is an expression of responsible, joint discernment about how to protect the most vulnerable in our society. The establishment of a national authority expressed widespread and even universal sympathy for

Francis Etheredge, BA (Hons), MA, is a writer and speaker based in Gloucestershire, England. His trilogy, titled From Truth and truth, is being published by Cambridge Scholars Publications (UK).
those suffering from the pain of infertility. But were the Warnock Committee’s deliberations obstructed by its assumption, however unconscious, that the practices of IVF and embryology could be morally regulated? What is it that derailed the promising ethical reflection that began with the American judges at Nuremberg in 1949 but failed to go further than the Belmont Report in 1979?

A Universal Ethic of Equality

Ethical action is not an imposition on human reality; rather, it expresses the intrinsic value of the person. Good action expresses and benefits the true good of all people. It is necessary to possess a proper understanding of truth, therefore, to fulfill our reciprocal responsibility for each and every person. Conversely, if an action is founded on a misinterpretation of truth, it will be discriminatory to the extent that it excludes any human being from the benefits due to all.

The birth of Louise Brown entailed experiments combining a man’s sperm and a woman’s ovum in a glass dish. This technique of conception was linked to the goal of treating her mother’s blocked fallopian tubes. IVF did not, however, cure the actual cause of her mother’s infertility.

The procedure was a substituted act that changed the normal process by which conception naturally occurs. Consequently, the moral evaluation of IVF has to be linked to its own proximate goal: bringing about the existence of a child outside a woman’s body. But intrinsically, this act replaces an act necessary to the good of the child, namely, to be conceived through the reciprocal self-gift of the spouses and, thereafter, to receive the unconditional expression of that love in the nurture and protection which follows natural conception. In sum, IVF entails an experimental procedure which of itself contradicts the natural right of a child to be conceived according to the intrinsic requirements of human personhood.

Donum vitae has helped us to see that a child is a gift. And if each person is equal-as-gift, then science and technology are to be placed at the service of all. This includes every person’s psychosomatic totality: a totality integral to procreation. Therefore, it is necessary to encourage a wholesome study of the total good of human procreation, for the benefit of both parents and child.

The person-as-gift, therefore, founds a universal ethic based on everyone’s equal receipt of the gift of existence. Thus, we need international regulations that foster the good of the whole human race. Our concern for the least among us should be at the forefront of our common concern for the good of all.

The Universal Ethic and Regulation

In the present situation in America and England, there is an inadequate response to the development of both universally applicable principles and regulatory bodies which oversee their implementation. Although it is possible to improve imperfect regulation on a national level, we live in an increasingly international world. Thus, there needs to be widespread participation in the articulation of rights and responsibilities which affect the daily life of the whole human race. In other words, there needs to be a forum which brings specific developments, or their future possibilities, before a world assembly where, it is hoped, the range of wisdom can overcome the vested interests and rationalization of existing practices.

The inadequacies of the existing situation, typically expressed by the English and American systems, require a radical re-evaluation of how best to serve the interests of each member of the human race. An international authority is the most natural way to recognize and promulgate a universal ethic based on the equality of each one of us being equally a gift. Indeed, it is the most natural way to recognize the growing evidence which founds such an ethic. As Jorge Cardinal Bergoglio said, “The moral problem with abortion is of a pre-religious nature, because the genetic code of the person is present at the moment of conception. . . . To not allow further progress in the development of a being that already has the entire genetic code of a human being is not ethical.” Moreover, to recognize that psychology is inscribed in biological development is to begin to unify the results of different but complementary studies of the human being. Finally, each religion is bound to recognize the expressed truths and act, according to its beliefs and practices, in accord with what is naturally of common concern to us all.

Notes

8. See Paul VI, Humanae vitae (July 25, 1968), n. 13. Good has three aspects ordered to each other: the virtuous, the useful, and the desirable (see Thomas Aquinas, Summa theologica 1.5.1–6). Moreover, truth and right action are integral to the love expressed in a morally good action.
10. See CDF, Donum vitae, II.B.5.
11. See ibid., I.6 and II.B.7 but also II.A.1–3 and II.B.4–8.
12. Ibid., intro., 2.
13. See ibid., intro., 3.
14. See John Paul II, Evangelium vitae (March 25, 1995), n. 73.
Non-Catholic Contributions

In non-Catholic circles, very little literature on medical ethics can be found prior to the 1960s. In 1954, Joseph Fletcher, a prominent Protestant professor of ethics and bioethics, conceded that “the most important observation to make here is that Catholic literature on the morals of medical care is both extensive and painstaking in its technical detail, while Protestant and Jewish literature is practically non-existent.”7 Rev. Joseph Tham, LC, notes that “Fletcher also observed with dismay that Catholics predominated in books and periodical writings in medical ethics, that they had a ‘Catholic Physicians’ Guild, but no Protestant counterpart, and a Linacre Quarterly, a Catholic journal of the philosophy and ethics of medical practice, but nothing at all equivalent to it from a Protestant source.”8

In 1969, Paul Ramsey, a Protestant pioneer in bioethics, introduced the concept of medical practice as “fidelity to covenant,” which includes all the things entailed by a religious covenant: “justice, fairness, righteousness, faithfulness, canons of loyalty, the sanctity of life, hesed, agape or charity.”9 A human being is sacred, he said, and “the sanctity of human life prevents ultimate trespass upon him even for the sake of treating his bodily life, or for the sake of others who are also only a sacredness in their bodily lives.”10

William F. May picked up this theme in his book The Physician’s Covenant (1983), in which he acknowledged that Paul Ramsey “first applied the term ‘covenant fidelity’ to the problems of medical ethics in this country in his impressive and influential The Patient as Person.”11

May adds images of the physician as parent, fighter, technician, and teacher. He describes the covenantal relationship of the Hippocratic Oath as threefold. First, a physician is indebted not only to his teachers but to the public for carrying some of the burden of his education. Second, the physician’s relationship with his patients is one between benefactor and beneficiary.12 Third, the covenant contains a promise to and an indebtedness to God. This covenantal relationship of the physician to teachers, colleagues, patients, and God works itself out in obligations of “professional self-regulation and discipline” and in fidelity to patients.13

US Bishops’ Involvement

Equally important for Catholic bioethics, especially in clinical practice, was the development of the Ethical and Religious Directives for Catholic Health Care Services (ERDs). They are based on the Ethical and Religious Directives for Catholic Hospitals, which were first published by the Catholic Hospital Association in 1948,14 revised in 1955, and revised and adopted by the United States Catholic Conference in 1971.15 They are now in their fifth edition.

The ERDs sum up the Catholic position on bioethics: Throughout the centuries, with the aid of other sciences, a body of moral principles has emerged that expresses the Church’s teaching on medical and moral matters and has proven to be pertinent and applicable to the

Louise A. Mitchell, MTS, is an adjunct professor at the University of Mary, in Bismarck, North Dakota, and associate editor of the Linacre Quarterly, in Philadelphia, Pennsylvania.
ever-changing circumstances of health care and its delivery. . . The moral teachings that we profess here flow principally from the natural law, understood in the light of the revelation Christ has entrusted to his Church. From this source the Church has derived its understanding of the nature of the human person, of human acts, and of the goals that shape human activity.\textsuperscript{16}

At the heart of Catholic tradition is charity. The Christian is called to imitate Christ, the Divine Physician, by practicing love for all through care for the sick.\textsuperscript{17} From this precept emerge five normative principles put forth in the ERDs: (1) promoting and defending human dignity, (2) caring for the poor, (3) contributing to the common good, (4) providing responsible stewardship of health care resources, and (5) refusing to provide or permit illicit medical procedures.\textsuperscript{18}

Deep Roots

Secular bioethics split from theology and metaphysics in favor of the rationalism and humanism which developed out of Enlightenment thought, whereas Catholic bioethics continued its own development, keeping both its theological and its metaphysical roots. For example, based on different views of the human being, the conclusions of secular and Catholic bioethics frequently conflict. Catholicism views the human being as a person from the moment of fertilization, made in the image of God and possessing innate human dignity. In contrast, secular bioethics usually holds that the human being acquires personhood depending on the ability to exercise rationality.

The deep roots of Catholic bioethics in theology and metaphysics (especially truth, the good, and teleology) allow it to maintain a more consistent stance on bioethical issues—the obvious examples being abortion and contraception—while at the same time examining more deeply and responding more thoughtfully (and quickly) to new challenges that arise from medical and technological advances.

Notes

3. See Leo XIII at DS 3323 (March 17, 1897, on artificial fertilization) and DS 3336–3338 (May 4, 1898, on accelerating labor, cesarean section, and laparotomy for ectopic pregnancy).
4. Ibid., DS 3760–3765 (August 11, 1936).
10. Ibid., xli.
12. Ibid., 116–118.
13. Ibid., 141–154.
15. See Kelly, Emergence of Roman Catholic Medical Ethics, 172–174.
17. Ibid., 6–7.
18. Ibid., 10–11.