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Philosophy and Theology: Notes on Condom Use by HIV Infected Spouses and Embryo Ethics

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These philosophy and theology notes focus on two matters of ongoing moral and public concern, namely, the use of condoms to prevent AIDS and human embryo ethics. The use of condoms by spouses to prevent the spread of disease is apparently discussed at the highest levels of the Vatican, though an upcoming document from the Congregation for the Doctrine of the Faith on bioethics, dubbed “Donum vitae II,” reportedly does not address the matter. However, the remarks of Cardinal Carlo Maria Martini who, newspapers report, endorses the use of condoms to prevent the spread of HIV among spouses, have drawn attention to the current debate.

**The Morality of Condom Use to Prevent HIV Transmission**

In an article in *The Thomist* titled “The Morality of Condom Use by HIV-Infected Spouses” (January 2006), Janet Smith, author of *Humanae Vitae: A Generation Later* and many other works, addresses this issue at the scholarly level. She offers a critique of the work of Rev. Martin Rhonheimer, who holds that condom use by an HIV-infected spouse to prevent the transmission of HIV is not intrinsically evil, although it may be wrong on prudential grounds. He believes that the contraceptive effect of the condom is not primarily intended; preventing transmission of a lethal disease is the intention. Rhonheimer’s view has prompted a number of responses, but perhaps the most thorough to date is the one Smith offers.

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Smith argues that the Church’s teaching on contraception may not be the key consideration in this issue. If only completed acts of sexual intercourse are moral (i.e., those “apt for generation”), then the use of a condom renders the act of sexual intercourse incomplete and no self-giving takes place. She notes that couples in which one spouse has HIV need not abstain for the rest of their marriage, but may consider the risk of transmitting HIV acceptable. Smith’s argument that only sexual acts apt for generation are morally permissible rests on philosophical, theological, and canon law grounds. She argues that condom use by spouses is intrinsically immoral because it violates the unitive meaning of the sexual act and that “condom use by fertile heterosexuals always retains a contraceptive meaning, even when done to reduce the risk of transmitting disease.” She also considers the morality of condom use by same-sex couples, heterosexual couples who engage in premarital sex, and prostitutes.

Smith’s arguments are especially interesting because they venture to answer many questions of sexual ethics that *Humanae vitae* and other Church documents do not explicitly address. Does the morality of contraception remain the same regardless of the marital status of the couple? (Cambridge philosopher Elizabeth Anscombe famously held that contraception was worse when practiced by a husband and wife than by an unmarried couple.) Would condom use by a same-sex couple add “another immoral element to the intrinsic evil of a homosexual act?” What kind of sexual acts consummate a marriage?³

In the end, Smith’s argument requires greater consistency in Church teaching and practice. It seems to be commonly accepted among moralists that in a case where, for example, a husband uses contraception, including barrier methods, the wife does not have a duty to refuse intercourse despite the contraceptive use of the husband. However, if condom use during sex is intrinsically evil, then it would seem that there is a duty always to refuse such intercourse. In other words, the following propositions would seem to be inconsistent: If a husband uses a condom to prevent his wife from getting pregnant, she may have sex with him. If he uses the condom to reduce the likelihood of transmitting a disease, she may not have sex with him. Either condom use during sexual intercourse is intrinsically evil, in which case she should refuse intercourse in both situations, or it is not intrinsically evil, in which case she has no absolute moral duty to refuse in either situation.

*Does the Rhythm Method Cause Embryonic Death?*

With respect to embryo ethics, two recent articles merit special consideration. First, in “The Rhythm Method and Embryonic Death” (*Journal of Medical Ethics*, June 2006), Luc Bovens argues that those who view IUDs, contraceptive pills, and “morning after” pills as morally problematic because they can act as abortifacients and cause embryonic death, should be equally if not more concerned about the “rhythm method,” which, he argues, causes even more embryonic deaths. Bovens’s argument is based on three assumptions:

The first assumption is that there are a great number of conceptions that never result in missed menses. There are estimates that only 50% of conceptions actually lead to pregnancies. The second assumption is that, even in clinical trials, the rhythm method can fail due to the fact that a pregnancy results from sexual intercourse on the last days before and the first days after the prescribed abstinence period. Estimates of the effectiveness of the rhythm method vary in the literature, but let us set its effectiveness for clinical trials at 90%—that is, conscientious rhythm method users can expect one pregnancy in ten woman-years. The third assumption is that there is a greater chance that a conception will lead to a viable embryo if it occurs in the center interval of the fertile period than if it occurs on the tail ends of the fertile period.

Taking these assumptions together, Bovens argues that those who are concerned about the loss of embryonic life should not only avoid using IUDs, contraceptive pills, and “morning after” pills, but should also not use the rhythm method. The real message of the article is in the last line, “One could simply conceive of this whole argument as a reductio ad absurdum of the cornerstone of the argument of the pro-life movement, namely that deaths of early embryos are a matter of grave concern.”

To critique a relatively minor point, it is unfortunate that Bovens speaks of the “rhythm method” rather than natural family planning (NFP) or fertility awareness. Over the last forty years, informed authors rightly distinguished between NFP and the rhythm method in terms of method effectiveness in achieving or avoiding pregnancy, since the rhythm method attempts to determine fertility in the present cycle via projections from the previous cycle, whereas NFP looks for signs of fertility in the current cycle.

More importantly, Bovens’ article provides no empirical evidence for the first and third assumptions of the argument. In letters to the editor of the Journal of Medical Ethics, many writers, most notably Joan Clements, editor of Ovulation Method Research and Reference, point out numerous studies that contradict the assumptions on which Bovens’s article rests.

Alexander Pruss, a philosopher now at Baylor University, provides an alternative critique. He argues that

Now in a case where uncontracepted sexual intercourse at a given time leads to a failure of implantation, a single act—intercourse—causes a human being to exist and to exist under conditions that make it impossible for the human being to survive more than about two weeks. But there is only one action here, and a fairly direct result of this action is conception. It is simply that the conceived child is, we assume, certain to die within about two weeks. The couple is not directly responsible for the death, since the couple did not create the conditions inhospitable to implantation. Furthermore, nobody is wronged by this act. For the child conceived at this point in time, call the time A, would not have come into existence had the couple abstained from the intercourse. Of course, if the couple engaged in intercourse at a different time, call it B, then perhaps the child conceived then would have lived longer. But that would have been a different child. By having intercourse at time A rather than at B, the couple is not wronging the child they are conceiving, since that child is not worse off for being conceived and living for two weeks than for not being conceived at all. Nor are they wronging the child they would have conceived at time B, since one cannot wrong someone who never exists. Moreover, there
is no action the couple could have done to give the child who actually comes to exist a chance to live a longer life. No one has been wronged.\footnote{Alexander Pruss, “We All Have a Finite Life Span,” letter, \textit{JME Online}, June 26, 2006. Pruss’s critique, as well as other correspondence about the Bovens article, is available at http://jme.bmj.com/cgi/eletters/32/6/355#575}

In a letter to the editor, Bovens has responded both to the empirical and philosophical critiques, but critics have registered still further objections to his provocative and deeply dubious article.

One further consideration is that an agent’s responsibility for negative unintended effects varies according to whether the agent’s action is otherwise morally permissible. If the agent does something that is morally wrong, then the agent’s moral responsibility for negative side effects differs from cases in which an agent does something morally right and negative effects follow. Ethically and legally, the case of a person who accidentally injures or kills someone in the course of committing a crime differs from that of the person who accidentally injures or kills someone while acting in an otherwise permissible way. Therefore, if contraception is wrong and if NFP is morally permissible on other grounds, even if they both cause embryonic deaths, the moral responsibility involved for these deaths would not be the same.

\textit{Licitness of Embryo Adoption}

The second article that discusses the topic of embryo ethics is “An Argument for the Embryonic Intactness of Marriage,” by Stephen Long in \textit{The Thomist} (April 2006). Long argues that heterologous embryo transfer (HET)—also called “embryo adoption”—is morally wrong. Since \textit{Donum vitae} condemns surrogacy, it can also be used as a basis to condemn embryo adoption, because “deliberately placing a child not conceived with one’s husband into one’s womb is to be a surrogate mother.” In the manner of Aquinas, Long raises nine prima facie considerations that one could argue in favor of the moral permissibility of embryo adoption: (1) a “physicalism” argument, i.e., “the moral species of one’s action is not determined simply by the physical nature of one’s action”; (2) the argument that the immorality of splitting genetic from gestational motherhood has already occurred; (3) if the education of children and breastfeeding may be done by another, so also can gestation of the child; (4) a condemnation of HET would seem to require intentional abortion in such cases; (5) carrying a child is not integrally necessary to the procreative end; (6) “even if carrying a child is integrally necessary to the procreative end, it does not follow that it belongs to the couple as couple and to no one else”; (7) technology alters what is “naturally” possible; (8) HET is more “natural” than to allow embryonic deaths or use artificial wombs; and (9) the “lesser of two evils” argument. The last section of his article seeks to answer all nine objections, and for the most part answers them well.

Long’s article should be required reading on the HET debate, but the conclusion that embryo adoption is intrinsically evil has not yet, in my opinion, been secured through his arguments. First, while it is true that \textit{Donum vitae} clearly condemns surrogacy, surrogacy should not be understood to include HET. In both definitions of surrogacy offered in \textit{Donum vitae}, it is defined as “a pledge to surrender the child once it is born to the party who commissioned or made the agreement for the pregnancy” (II, 3). However, at least in the typical case of embryo adoption, the gestational mother
does not make a pledge to surrender the child once it is born but rather intends to raise the child as her own. In other words, cases of HET do not (at least normally) involve any agreement with those who commission the pregnancy nor do they involve (at least normally) a pledge to surrender the child once it is born. Indeed, embryo adoption more closely approximates the ideal of integrative parenthood championed in *Donum vitae* than does adoption after birth, for in embryo adoption the same woman is the gestational and social mother, whereas in a typical adoption the woman who raises the child does not gestate the baby.

Long’s argument is not simply derived from the authority of *Donum vitae*, but rests on a rich conception of the normativity of natural teleology. He writes, “just as the acts leading up to and including conception are rightfully those of the spouses as spouses, so the bearing of the child, which is integrally necessary to the procreative purpose, belongs rightfully only to the spouses as spouses and to no one else.” Long understands the procreative end to include not only conception but also the birth of a live child, “The bearing of the child in the womb by the mother is naturally and normatively necessary to the end of a live child, and so that which generically pertains to the procreative good belongs to it insofar as it is integrally necessary to the procreative good.”

Biologically speaking, however, the bearing of the child in the womb by the biological mother is not necessary to the end of a live child. Cases of HET have been successful; thus, it is not naturally necessary, in the biological sense, that the biological mother be the gestational mother. Since precisely the issue at hand is whether it is normatively necessary that a woman nourish her own biological offspring in her own womb, I do not see how this consideration can function as a premise without begging the question.

Long’s argument hinges in part on his understanding of the integral purpose of procreation:

If it is said that such “adoption” [HET] is not procreative, because procreation is only “conception,” this has been answered above: under natural law the integral purpose of procreation is the delivery of a live rather than a dead child. Hence childbearing is integrally necessary to procreation, and belongs, as does all that is essential to the natural procreative end, to the couple as couple and to none other.

In this view, shared also in different terms by others, procreation properly understood includes gestation, so those who choose HET separate the procreative act from the unitive act of sexual intercourse, much the same as do those who practice IVF.

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5 I will not address the important question of whether a woman who adopts an embryo may decide to place the child for adoption after birth. In other words, I do not address here the permissibility of splitting what might be called “gestational motherhood” from “social motherhood.” For more about this question, see E. Christian Brugger, “In Defense of Transferring Heterologous Embryos” *National Catholic Bioethics Quarterly* 5.1 (Spring 2005): 109–111.

Although writing prior to publication of Long’s work, Christian Brugger has indicated several challenges for an expanded understanding of procreation. The view advocated by Long seems to be in some tension with the idea that a new human being comes into existence when fertilization is complete. When there is a new human being, procreation, strictly speaking, has already taken place. If procreation lasts throughout gestation, then abortion does not really kill an innocent human being. Gestation is a period of development of the human child, which implies that the human being already exists, and hence procreation has been completed.

If we understand procreation in a broader sense to include all that is essential to the natural procreative end, then it is unclear why “procreation” (which initiates human development toward maturity) should be said to end at birth, for the process of human development continues during infancy and beyond. Parents whose child dies just a few days after birth equally fail to achieve the procreative end (in the broader sense) as those whose child dies just before birth. In other words, it is unclear why “live birth” is the determinate line that circumscribes the procreative end understood in the broad sense. Without this line, if we adopt the broader definition of procreation, the exclusive reservation of procreation to married couples would seem to exclude not only embryo adoption but adoption of a child prior to birth (during gestation) as well as adoption after birth. I believe it is more accurate to understand the gestation of a child as an “educational” end, which of course does not merely include formal education, but (arguably) in the original sense of the term “leading” the underdeveloped human being toward physical and spiritual maturity. Although ideally the education of the human being should be undertaken by the biological parents, in cases where these parents are unable or unwilling to undertake responsibility for the growth and development of a human being toward maturity, this responsibility may be accepted by adoptive parents.

Long makes an interesting and original observation: “For a religious woman to choose to implant in her womb an embryonic human being is a violation of her profession of perpetual chastity, by which she turns away from the fecundity of the flesh in the blessings of marriage for the sake of the Kingdom of Heaven.” I think one can intuit that embryo adoption is inappropriate for the professed religious and yet not condemn all instances of HET. Religious men and women pledge to achieve fruitfulness in the community that is not tied to normal family structures, so any kind of adoption would be inconsistent with their vows. Additionally, for religious women, if they were to undertake HET, many people would falsely assume that they had sexual intercourse and had thereby broken their vows. However, neither of these considerations excludes the use of HET by married couples seeking to make the best of a broken situation, just as couples have for centuries in generously adopting children after birth.

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