Ethics of Procreation
and the
Defense of Human Life
Ethics of Procreation and the Defense of Human Life

Contraception, Artificial Fertilization, and Abortion

Martin Rhonheimer

Edited by William F. Murphy Jr.

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Acknowledgments

Chapter 1 was originally published in *The National Catholic Bioethics Quarterly* 9, no. 3 (Fall 2009) and is reprinted by permission. An earlier and less-developed form of chapters 2 and 3 originally appeared as “Contraception, Sexual Behavior and Natural Law” in the *Linacre Quarterly* (1988). This original material was stylistically revised and integrated with material that had been later written by the author and originally published in German. This new material was translated by Joseph T. Papa, as were the essays that now appear as chapters 4, 5, and 6. Chapter 4 was originally published in the *Josephinum Journal of Theology* 14, no. 2 (August 2009) and is reprinted with permission. Chapter 7, which originally appeared in the *American Journal of Jurisprudence*, was translated by Paolo Carozza and is reprinted by permission. Acknowledgments regarding some of the additional texts are included in the author’s introduction. Some of the translation and editing expenses for this volume were generously funded by the Cardinal Pio Laghi Chair of the Pontifical College Josephinum.
The present volume brings together, for English language readers, a collection of essays in which the Swiss philosopher Martin Rhonheimer addresses some of the most difficult and contested questions regarding the ethics of procreation. As indicated by the subtitle, the questions addressed range from that of contraception—and special cases related to it—to those of artificial fertilization and abortion. His treatment of the long-disputed question of contraception is unique and compelling, and few English-language scholars have shown familiarity with it. The present availability of it in extended form, following the fortieth anniversary of *Humanae Vitae*, therefore offers a valuable resource for those theologians and philosophers who still hope to move beyond the stalemate that has developed especially around this question, but extending more broadly. Such readers will also find this volume particularly helpful in considering related questions such as the use of contraceptives under threat of rape. Readers will also find that Rhonheimer’s reading of Thomistic virtue ethics from the “perspective of the acting person” sheds surprising new light on the questions of artificial fertilization and abortion.

Moralists who want to rethink these and other difficult questions, while taking into account the lively ongoing debates regarding the retrieval of Thomistic moral theory in light of *Veritatis Splendor*, will be particularly interested in the present volume because of Rhonheimer’s central role in these theoretical debates. They will therefore want to read the present
volume in conjunction with the others that are available, or are becoming so, in English. These include his somewhat exploratory *Natural Law and Practical Reason: A Thomist View of Moral Autonomy*,\(^1\) which was published in the year 2000, and the recently published *The Perspective of the Acting Person: Essays in the Renewal of Thomistic Moral Philosophy*,\(^2\) which includes many of his most important essays in moral theory, along with an introduction that outlines his broader body of work while locating it in light of alternative readings of Aquinas. Complementary works also include his applied work *Vital Conflicts in Medical Ethics: A Virtue Approach to Craniotomy and Tubal Pregnancies*, published by the Catholic University of America Press in 2009, and his systematic ethical treatise *The Perspective of Morality: Philosophical Foundations of Thomistic Ethics*, forthcoming from CUA Press.\(^3\) It is my hope that readers will find the present volume a valuable contribution to the literature and that it will facilitate greater consensus on the particular questions it addresses and regarding moral theory in general.

I would like to offer special thanks to Martin Rhonheimer for his collaboration in this and other projects, to Dr. Joseph T. Papa for his careful work in translating and copyediting much of the present text, and to Damian X. Lenshek for his editorial assistance with several aspects of the project. Particular thanks are due to the staff of the Catholic University of America Press, especially James Kruggel and Beth Benevides, for their skilled facilitation of this project.

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3. Also in preparation is another volume of Rhonheimer’s essays that I am editing, which is tentatively entitled *The Common Good of Constitutional Democracy: Essays in Political Philosophy and on Catholic Social Teaching*. Yet to be translated is his *Praktische Vernunft und Vernünftigkeit der Praxis: Handlungstheorie bei Thomas von Aquin in ihrer Entstehung aus dem Problemkontext der aristotelischen Ethik* (Berlin: Akademie Verlag, 1994), which might be rendered in English *Practical Reason and the Rationality of Praxis: Thomistic Action Theory in the Context of its Origin in Aristotelian Ethics*.
Never before in the course of history has such great importance been given to the protection of human life (and with such protection being realized in so broad and effective a manner) as in the modern liberal-democratic societies in which a large part of humanity lives. Notwithstanding wars, manifold forms of violence and criminality, and small- and large-scale catastrophes brought about by technology, the individual today possesses a degree of security, guaranteed by the state, that was never experienced in earlier historical epochs. Nevertheless, paradoxical as it may seem, this same contemporary civilization—guarantor of an almost complete security against every possible risk to life—has created structures that lead to new threats against life and human dignity, even as these structures are frequently praised as progress.

Threats to life are certainly as old as humanity itself. Such threats have taken a variety of forms that clearly and indisputably merit condemnation (wars, murders, torture, exploitation of labor in ways threatening and harmful to life, etc.). As such, the ethical characterization of these actions has rarely raised questions of a fundamental nature, which is not to say that they are easily eliminated from the life of society. Other forms of threat against life have traditionally been similarly (or in even greater measure) stigmatized, yet in contemporary soci-
ety they seem to receive a growing tolerance, if not even acceptance in principle. This is true above all regarding the practice of abortion—the killing of the fruit of the maternal womb—and regarding euthanasia.

These threats to human life, increasingly tolerated and accepted, are at the same time less and less considered to be precisely threats. Certainly, the majority of people in today's world would rule out abortion and euthanasia as behavioral possibilities for themselves. A great number of thoughtful people, however, are disposed to tolerate such behavior in others and to reject, as discriminatory and intolerant, a general proscription of such behavior by the society and the state.

Thus, an entirely new situation has arisen. “Tolerance” is no longer the tolerating of a practice concerning the evil of which there exists more-or-less common agreement, though the perpetrator is left in peace so as to not jeopardize higher values; rather, tolerance becomes in a certain sense the acceptance of modes of behavior that one would never consider for oneself, but that are to be allowed for others as legitimate alternatives for action. It is clear that such “tolerance”—which in reality is much more than simple tolerance—cannot fail to have significant consequences in juridical systems, as well as in people’s thoughts and sensibilities, and thus with respect to the socio-psychological bases of entire societies, given that such an attitude is ultimately not tolerance, but recognition.

Some of these problems are discussed in the following essays, collected here in a single volume; in particular, the essay concerning abortion and the protection of life in the constitutional democratic state addresses the just-mentioned question. The overall theme of the book, however, is essentially broader, even if it does limit itself to questions concerning the beginning of life. The book will address not only of modes of behavior that threaten life directly and per se, but also behaviors that threaten life only very indirectly: the artificial production of human life in a test tube, and contraception. It may surprise the reader that artificial fertilization might have something to do with threats to life; indeed, it would seem to be just the opposite. Don’t such procedures create new life where it wasn’t before, and indeed where there was no possibility of life? And isn’t it true that life is here neither threatened nor destroyed? When one becomes aware, however, of the fact that it is often couples who are no longer able to have children because of an earlier abortion who resort
to artificial fertilization, and when one learns as well of the widespread practice in this context of the destruction of fetuses and of the number of “extra” embryos that are not implanted, he can begin to readily see the connection between artificial fertilization and threats to life.

The essay in this volume that deals precisely with in vitro fertilization will not, however, depart from this question; it will rather shed light so to speak on a deeper level of the problem: the link between the “domination” of man over the beginning of life and over its end. If artificial fertilization is seen not simply as a “therapeutic” technique for overcoming infertility, but as a specific form of domination over the beginning of human life—and where indeed this underlying attitude is more important than the technical aspects of the procedure—then the connection with domination over the end of life becomes increasingly clear, whether in the fetal state, in conditions of chronic illness, or in cases of painful or incurable disease.

Contraception is a different case, however, and one that would seem to have nothing to do with this issue. Indeed, to address contraception in this context of threats to human life such as abortion runs the risk of asserting something that has always resulted in strong objections, including when such assertions have been made regarding the Catholic Church’s teaching. I refer to an unjustifiable way of linking contraception and abortion, which undermines the condemnation of abortion by, for example, implicating in acts of deliberate abortion those couples who use contraception for serious reasons.

In the encyclical Evangelium Vitae the magisterium of the Catholic Church has effectively cut the ground from under this objection that the Church confusedly associates contraception too closely with abortion by making clear that contraception and abortion are two different violations of the moral law. Only the latter is properly to be considered a violation of the commandment “Thou shalt not kill” and of the virtue of justice, while the problematical nature of contraception pertains to the virtue of chastity. Nevertheless, Evangelium Vitae asserts concerning both of these modes of behavior that “despite their differences of nature and moral gravity, contraception and abortion are often closely connected, as fruits of the same tree.”

1. John Paul II, Evangelium Vitae, 13. Cf. also my analysis: Contracezione, mentalità contraccettiva e cultura dell’aborto: valutazioni e connessioni, in Pontifical Academy for Life,
The analysis undertaken on this theme will attempt to clarify these “connections.” The key word here will be “responsibility,” or more precisely “procreative responsibility,” not only with respect to the procreation (or not) of human life, but with respect to one’s own sexual behavior, that is, the bodily dimension of human love as an integral component of its fully personal meaning. The practice of contraception is presented here as actions pertaining to one’s sexual behavior that intentionally separate sexual acts from procreative responsibility. It will thus become clear that the separation of the two meanings of human sexuality (“love” and “responsibility for life”) effected by contraception encourages a mentality that can ultimately view the violent destruction of an unwanted new life almost as an “alternative form” of contraception. A contraceptive measure that either fails or is applied “too late” thus leads to a killing, and as such is intimately connected with the widely diffused “abortion mentality.”

In fact, responsibility for life begins where human life begins, in the intimate bodily union between man and woman. If bodily love—sexuality—becomes structurally an event in which the dimension of responsibility toward the generation of new life no longer plays any role (because one’s sexual behavior has been consciously and voluntarily deprived of this dimension through contraception), then the attitude toward life and its coming into being must necessarily change as well. A life that is no longer considered to issue essentially from the loving union of man and woman, but is rather the collateral and “planned” product of a sexuality that itself no longer has an intrinsic connection with the transmission of life, may—one could then say—be legitimately produced in other ways as well. At the same time, a new human life would seem to possess no unconditional right to exist if, due to contraceptive failure, it comes about unexpectedly and contrary to the wish of the parents. Abortion thus becomes contraception _ex post_, or “after the event,” and the circle is closed between an undesired baby that is aborted and a baby generated in a test tube. Both are fruit of the same “culture of death,” which is thus named not so much because it kills, but because in a certain way man exalts himself as judge and lord over life and death.

These thoughts provide the general theme of the following essays and the common thread connecting them. The initial essay illustrates how the retrieval of Thomistic ethics employed in the present defense of human life is properly understood as consistent with the directions encouraged by John Paul II in his encyclicals Veritatis Splendor and Evangelium Vitae. The long treatment of contraception as an ethical problem in part 1, under the subheading, “Sexuality and Responsibility” provi- des our way of approach, so to speak, to the whole discussion. Central to the argument of these chapters is the elaboration of the concept of a moral virtue, called here “procreative responsibility” and understood as the integrating element of conjugal chastity, as a human perfection, in which man’s bodily-spiritual unity is shown in an exemplary way. Indeed, every question that in some way or another has to do with the understanding of human life is tied up with the understanding of human sexuality. The questions addressed in this opening part are also relevant for the themes of in vitro fertilization and abortion, though these latter themes each contain completely new, specific, and unique problems.

Concluding the treatment of the ethics of procreation is the brief fourth chapter, which attempts to address the concrete question of the use of contraceptives in the case of a foreseeable rape. The fifth chapter, on reproductive technology, shows, as mentioned above, domination over human life from what might be called a “positive,” that is a “pro-

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ductive,” point of view. Conception and life itself become means for fulfilling the desire and happiness of those who “produce a child” by these methods. Human life is thus no longer a reality that is excluded, even if not completely, from human intervention, and that can therefore claim an unconditional respect. In the context of reproductive technologies, respect for human life rather becomes a changeable function of the desire of third parties. Reproductive technologies thus represent that facet of “dominion over life” whose other face is precisely the killing of an undesired life in the mother’s womb.

The sixth and seventh chapters consider the theme of abortion. Chapter 6, “Human Fetuses, Persons and the Right to Abortion: Toward an Absolute Power of the Born?” attempts a systematic refutation of an extremely “consequentialistic” position that is more and more widely held, and likewise extremely dangerous: the utilitarianism of an “ethics of interest” espoused by such thinkers as, for example, P. Singer, M. Tooley, M. Anne Warren, B. Steinbock, and H. Kuhse; the argumentation has been advanced in German principally by the legal philosopher Norbert Hoerster. At the core of this systematic argumentation, which my essay attempts to refute, is the distinction between “man” and “person.” The article considers the essential categories necessary to demonstrate that human embryos and fetuses are worthy of an absolute recognition as persons, and therefore possess a corresponding right to life.

The seventh and final chapter treats of the right to life of the unborn from the points of view of political or legal philosophy, and that of the State. It was written on the occasion of John Paul II’s encyclical Evangelium Vitae, which appeared in 1995. Here we are no longer dealing


with a question only of morality or of the personal conduct of one’s life, but of the legitimacy and limits of an intervention by the state to efficaciously protect unborn life. More precisely, it responds to the question of the protection of life and the need for a corresponding and coherent political-juridical-ethical argumentation in the context of the modern democratic constitutional state, which has its own distinctive criteria for handling questions concerning the relation between civil law and morality.8

The question is a highly complex one. Our treatment begins with fundamental considerations concerning the relation between the moral plane and the juridical-political plane.9 It continues through a consideration of the role of civil law in the course of history, the relevant doctrine in the encyclical Evangelium Vitae, and a paradigmatic treatment of the rendering of judicial judgments (at the level of the respective constitutional courts) in the United States and Germany. It proceeds further through a presentation of the most significant argumentative strategies for denying a protective function of the state with respect to the unborn. Finally it presents, in connection with Evangelium Vitae, an argument demonstrating why state protection of the unborn must be considered an urgent demand of the common good.

This completes the summary of the themes considered in this volume. The reader may wonder about the absence of treatments of current themes such as genetic technology. Certainly, one encounters in such technologies questions of responsibility with respect to the transmission of human life and its protection. Procedures such as experimentation on living human embryos, interventions on the genetic code for eugenic purposes, and even human cloning would seem to raise fewer fundamental questions than the practices treated here, however, perhaps pre-

8. The encyclical Evangelium Vitae, no. 71, 3, offers perhaps the interpretive key for this, when it says: “Certainly the purpose of civil law is different and more limited in scope than that of the moral law.”

cisely because of their clear unacceptability. Contraception, the production of human life in a test tube, and abortion, on the other hand, even where they cannot be said to be generally accepted, seem to most people to be admissible at least in certain cases. Precisely for this reason the systematic analysis of the ethical dimension of these modes of behavior seems to be particularly important.

Moreover, it is worth mentioning that the increasingly wider acceptance of the practices discussed here hints at the possibility of addressing these questions without being concerned about having an immediate practical effect. Contraception, reproductive medicine, and abortion are more or less recognized realities in advanced societies. This is no reason, however, to cease to be concerned with their respective ethical problems. On the contrary! The pathology of a society in which these modes of behavior are accepted can perhaps be correctly understood only if corresponding parameters for judgment are provided by the ethical perspective. In fact moral philosophy—ethics, morality—addresses itself to man and to his happiness.10

Immoral action can lead to enjoyment and pleasure, but it does not promote happiness. And the pathologies of today’s society—with all of its undeniable blessings and movement toward progress—are precisely pathologies of man defrauded of his happiness, seeking enjoyment and pleasure but unable to find a happiness that is authentic and enduring.

A word on contraception. Like none of the other practices discussed here, contraception is widely accepted and practiced in many forms. Personally, I assume that most people are convinced that in contraception they do something completely normal, unproblematic, and even reasonable. What is written here in no way intends—and I want to say this explicitly—to denigrate those who practice contraception, considering them in some way as “potential murderers” of unborn children. My thoughts concerning this latter argument are explicitly articulated in the course of the book.

Some may nevertheless be troubled by the fact that contraception and

abortion are here often considered together; the predication of certain connections, however, between these two erroneous types of behavior in no way implies the intention to impute the same degree of gravity to both. Abortion is the killing of an innocent living human being, that is, of a human individual with eternal value. Contraception, on the other hand, is an erroneous means for arriving at an end which in itself may be exceedingly correct, and even morally demanded, and for which there also exist morally just means for reaching: the avoidance of the coming into being of a new living human being. I view attempts to consider contraception as the potential killing of a living human being, simply on the basis of its motivation and intentionality, to be misleading; the reader will find my precise reasons for this in what follows.

This completes my introductory comments on the contents of the book. The author hopes that it will serve to clarify some of the issues that led John Paul II in Evangelium Vitae to speak of a “culture of death,” which is to be opposed by a “new culture of human life.” The “culture of death,” one may say, is characterized by a new—and highly dangerous—link between protection of life and threats to life. On the one hand priority is given in our modern societies, as never before, to the protection of the physical integrity of the person, to his health, and to the support of people with handicaps of every sort. On the other hand these same societies, with their comprehensive social security nets and public health entities, increasingly tend to exclude any “disturbing elements,” or those that are too burdensome, from the system—and this, to be frank, on the basis of clearly identifiable interests that discriminate against certain groups of people.

In fact, there can be no other explanation why the killing of the unborn is supported as a procedure of social insurance and health entities, while on the other hand the public tendency is rather to reduce abortion procedures on the handicapped. Thus, public health authorities establish discriminatory structures in the interest of the already born, those with financial means, the healthy, and so on. The fact that the elderly—who are increasingly a burden on health systems because of advances in medical technology, increased average age, and the increasing disproportion between earners and pensioners—are less exposed to the dangers of this discriminatory dynamic is due above all to the still-effective mechanism of democracy based on majority rule: the elderly are in fact more
and more the majority in developed nations. This could eventually lead, however, to an “insurrection of the young” when they, as the working population, feel themselves held hostage to the interests of a generation of elderly—a generation, by the way, that continues to bear responsibility for the demographic disequilibrium between the generations.

The creation of a “new culture of human life” called for in the encyclical *Evangelium Vitae* must nevertheless take place on a variety of levels, with the political-juridical level being only one aspect. Laws, however, “play a very important and sometimes decisive role in influencing patterns of thought and behavior.”¹¹ In a society shaped with reference to individual rights, laws and court decisions are expressed in the public space through a “language of responsibility,” and possess therefore an expressive function shaping the popular mentality.¹²

Ultimately, then, the creation of a culture of life must occur in the place where life comes into being and receives its earliest development: in the heart of the family. *Evangelium Vitae* points this out clearly. The family is the place where consciences are formed, and where charity, readiness to serve, and those virtues that lead to the acceptance of human life in all its states and conditions, as both a gift and a task, must be experienced and learned. In this way the family becomes a focal point of the interest and the protection of all.

I would like to express particular thanks to Professor Bill Murphy of the Pontifical College Josephinum for proposing this collection, for conceiving its form, for securing translation of the various components, and for integrating the originally published English text of part 1 with later expansions of it, and for his execution of the entire process.

Besides those journals mentioned in the acknowledgments, thanks are due also to Tyrolia Publishers of Innsbruck, to the Institute of Medical and Bioethical Anthropology (IMABE) of Vienna, and to the magazines *Annales Theologici* of the Pontifical University of the Holy Cross in Rome and *La Scuola Cattolica* of the Archbishop’s Seminary of Milan, for their friendly permission to reprint the present essays or for translation rights.

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May the present volume serve to make the works collected here accessible to a wider public.
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