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IN VITRO FERTILIZATION (IVF)

AND THE ALABAMA SUPREME COURT RULING

By Kathleen Lavery

THE FIRST IVF BABY

It is hard to believe in this day and age, but in 1978, I was the first person in my family to attend college. One of the most important lessons I learned was critical thinking and not to believe everything I was told. The class on Ethics was particularly enlightening.

In 1978, Louise Brown was the first baby born through in vitro fertilization (IVF) in Manchester, U.K. Controversies surrounding her birth ranged from the argument that she wouldn't be a "normal" child to claims that she didn't have a soul.

One night while watching the news broadcasts about Louise Brown, my

mother turned to me and asked why IVF was so controversial. After all, it provided childless couples with the child(ren) they so desperately wanted and as children were a gift from God, how could this be wrong? We were discussing the very subject in my Ethics class and I shared what I knew with her. The primary concern at that time was that it wasn't one child that was created through IVF in order for the couple to have a child, but that several children had to be created in the laboratory. More than one child was implanted into the woman's womb in the hopes of one child coming to term and being born. The other children were subsequently discarded as they were of no use. Or if they were deemed healthy

and viable, they could be frozen for future use.

I remember the look of utter shock and disgust on my mother's face when she heard this. "But these are children," she stated. A brief discussion followed with her wondering why science just couldn't create one embryo at a time. The other children created through IVF were still children and just as important as the one that was born. What right did we humans have to create children that we would kill or set aside until it was convenient for the parents for the child to be born. We did not discuss the myriad of other ethical issues surrounding IVF.

Since that time, more than

twelve million children have been conceived and born through IVF while millions more wait in a frozen wasteland for their chance to be held, loved and have a meaningful life of their own.

The science of IVF has been around since the 1960's. By the time Louise Brown was born, there had been 282 previous failed attempts in England.

Ciara Nugent wrote in a *TIME* magazine article in 2015: "Many were jubilant about the first successful IVF birth. Stuart Kunkler from Columbus, Ohio, wrote to the magazine that it would be 'a glorious day for women afflicted with the type of sterility Mrs. Brown

has overcome,' while Margaret Wood Milan from New Hampshire wrote that, as with abortion rights, the arrival of IVF was a boon for those who share 'the same basic belief: that parenthood should be a matter of choice.'

"Others were terrified of what Louise would mean for humanity. Religious groups were opposed to the idea of 'playing God' with reproduction, and to a process in the course of which many embryos often died. But even secular society found the idea alarming. Newspapers and readers made regular comparisons to Aldous Huxley's 1934 novel *Brave New World*, in which natural sexual reproduction is banned and humans are grown in labs through a process similar to what happened before the embryo was placed inside Lesley's womb. 'We're on a slippery slope,' British Geneticist Robert J. Berry told *TIME* in 1978. 'Western society is built around the family; once you divorce sex from procreation, what happens to the family?'"

Over the years, IVF became accepted throughout the world and the unborn children were no longer considered children, but property to be stored and used at the discretion of the parents. Children in their earliest stage of development were now only referred to by the scientific term of embryo. Children as property was now the status quo.

IVF was now turning into a business with egg and sperm banks opening up around the world. As with any business, IVF clinics answered frequently asked questions and offered suggestions to put their clients at ease.

An example is Donor Nexus, an egg donor agency and egg bank located in Newport Beach, Southern California, which offers the following suggestions on what to do with unused embryos:

"Couples or individuals faced with decisions about their excess embryos typically have six options:



1. Preserving the embryos for future transfer attempts
2. Offering the embryos to other hopeful parents
3. Contributing them to scientific research
4. Allowing them to thaw and then discarding them
5. Some clinics offer 'compassionate transfer,' where embryos are transferred into the uterus during a non-fertile period
6. Opting for continued storage"

ALABAMA SUPREME COURT

IVF was a private decision between the business and the client until an incident at an Alabama clinic in 2020. A patient entered the fertility clinics unattended cryogenic storage center, opened one of the tanks, and removed some of the embryos. The embryos of three different couples were destroyed when they were accidentally dropped on the ground.

The three couples filed a wrongful death suit against the clinic. The

circuit court judge initially ruled in favor of the clinic arguing that embryos are property and not persons. The couples appealed to the Alabama Supreme Court. In an 8-1 decision (February 2024), the Court ruled that human embryos preserved cryogenically in in vitro fertilization (IVF) clinics are "extrauterine children," and are therefore protected under the state's "wrongful death" law.

The ruling has sent shockwaves throughout the IVF industry. At the moment, the ruling only affects Alabama. The Alabama legislature quickly passed a bill that was signed into law that provides criminal and civil immunity to providers and patients of IVF services for the destruction or damage to embryos. Many states are likely to enact their own legislation to protect the IVF industry.

The new Alabama law, however, does not address the heart of the Alabama Supreme Court decision: That an embryo is a human being who deserves life, a concern that

the Catholic Church has expressed since IVF came into existence.

CHURCH TEACHING

Fr. Shenan J. Boquet, MDiv, MSBe, EOHSJ, President of Human Life International, wrote the following:

"Rather than running frightened from this decision, so-called 'pro-life' American politicians should be asking themselves how it is they missed something so glaringly obvious, i.e. that IVF involves the industrialized commodification and destruction of human life in a way that clearly violates fundamental pro-life principles.

It may come as a surprise to some people (though it certainly shouldn't), but the Catholic Church has consistently maintained and taught that IVF is a grave evil, precisely because it distorts human procreation by assaulting the ends of marriage (Humanae vitae, no. 12) and ignores the right of the child to be begotten through a mother and father's act of love (i.e., marital act),

failing to see the child as equal in dignity to his or her parents.

The Church is despised by so many people not because it is imposing a religious view on the science, but rather because it is the only institution that acknowledges the science, and then consistently applies fundamental ethical principles to the science. ‘We all say we agree that all human beings have human rights,’ states the Church. ‘But we alone have the courage of conviction to be consistent and to apply this in all cases.’

In the Declaration on Procured Abortion, the Congregation for the Doctrine of the Faith (CDF) states that, ‘from the time that the ovum is fertilized, a life is begun which is neither that of the father nor the mother; it is rather the life of a new human being with his own growth. It would never be made human if it were not human already. This has always been clear, and ... modern genetic science offers clear confirmation...’

In *Donum vitae*, the CDF draws out the sweeping ethical implications of this scientific fact:

Thus, the fruit of human generation, from the first moment of its existence, that is to say, from the moment the zygote has formed, demands the unconditional respect that is morally due to the human being in his bodily and spiritual totality. The human being is to be respected and treated as a person from the moment of conception; and therefore, from the same moment his rights as a person must be recognized, among which in the first place is the inviolable right of every innocent human being to life.

Unfortunately, the public debate on IVF is often extraordinarily shallow and uninformed. As we saw above, many people, including self-proclaimed ‘pro-life’ politicians, view the Church’s position as self-contradictory. ‘You say you’re pro-life,’ such people will say, ‘and yet you are opposed to infertile couples being given the gift of having children through this marvelous technology.’

Even more dishonestly, some people will suggest that by opposing IVF, the Catholic Church is somehow rejecting the children who are born through IVF.

It can be infuriating dealing with such grotesque misrepresentations of the Church’s position. In many cases, these misrepresentations seem to be motivated by nothing other than a perverse desire to confuse and mislead. However, in other cases it stems simply from ignorance, and our own failure to teach clearly.

In responding to the kind of misrepresentations we saw above it is important that, in the first place, we emphasize that children who are born through artificial reproductive technologies are, in every single respect, as worthy as any other human being. After all, the children conceived through IVF had no part whatsoever in the choice of the mode of their conception. They bear no guilt, and the mode of conception clearly has no bearing whatsoever on their dignity and worth.



Fr. Shenan J. Boquet,
President of Human Life International

The Vatican clearly affirmed this principle in *Donum vitae*, writing, ‘Although the manner in which human conception is achieved with IVF ... cannot be approved, every child which comes into the world must in any case be accepted as a living gift of the divine Goodness and must be brought up with love.’

Secondly, it is important that we emphasize the ethical principle that a good aim or intention does not make an evil act good. Yes, many couples who resort to IVF desperately desire children — a desire that is, in and of itself, a good thing. The children that come about through IVF are also good. However, the means that the parents have chosen to pursue the good aim of having children is evil, regardless of their intentions. As such, it must be opposed.

Right now, it is estimated that over one million embryonic human beings are in cryogenic suspended animation in U.S. IVF clinics. Many millions more are preserved in clinics elsewhere on the globe or are being created and experimented upon (and destroyed) in many universities. Tragically, our consciences have been dulled to this industrialized destruction of human life.

Let us pray that the Alabama Court’s decision will provide an occasion for some serious soul-searching about our society’s premature and unjustified acceptance of IVF. And in the meantime, let us educate ourselves on these complex issues by reading the Church’s rich teaching documents, so that we are better equipped to respond to the many distortions on this topic in the media and popular culture.”

What is In vitro Fertilization (IVF)?

According to Yale Medicine: In IVF, an individual’s eggs are fertilized with sperm “in vitro.” In vitro is a Latin phrase that means “in glass.” IVF means that fertilization occurs outside the body, in a laboratory dish under controlled conditions. IVF is the most common type of assisted reproductive technology (ART).

What is the process of In vitro Fertilization (IVF)?

Females are given hormones to stimulate their ovaries into producing a larger quantity of mature eggs that can be retrieved and used during IVF.

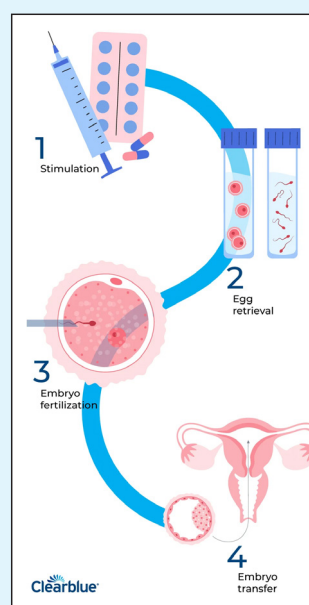
Once the eggs are removed from the female, the eggs are then fertilized with sperm in a laboratory. The fertilized egg, now referred to as an embryo, is allowed to grow for three to five days in the laboratory. Doctors observe the growth of the embryos and determine which embryos will continue to develop into viable pregnancies.

The doctor and patient determine the number of embryos that will be implanted into the uterus in hopes of achieving a successful pregnancy. Embryos that have not been implanted can be frozen for future use, discarded, donated for scientific research or made available to other infertile couples.

Are there side effects associated with In vitro Fertilization (IVF)?

Potential physical side effects to the woman can include: Blood clots; infection; abdominal bleeding; twisting of the ovary and, in some cases, the fallopian tube, disrupting blood flow; allergic reaction to medications; ovarian hyperstimulation syndrome where the ovaries swell and leak fluid into the abdominal cavity and chest area.

There can also be the risk of increased pregnancy complications for someone who conceives through IVF: a multiple pregnancy that can result in selective abortion of one or more of the unborn children; high blood pressure; heterotopic pregnancy, when one embryo attaches to the lining of the uterus and another embryo attaches to a site outside of the uterus.



Parental Desires, Children and IVF

By Fr. Tad Pacholczyk

Whenever I give talks on in vitro fertilization, I try to explain to my audiences how new human life must be procreated in the warmth of the marital embrace and in the protective hearth of the maternal womb, not in the icy, impersonal world of the research laboratory, or the manipulative setting of a Petri dish.

On one occasion, after finishing up a talk, a married couple approached me. They had done in vitro fertilization and had several children from the procedure. They appeared to be struggling in conscience, and posed a searing question: “If in vitro fertilization is wrong, are you suggesting it would be better that we didn’t have our beautiful children? We can’t imagine our life without them.”

Imagining a world different from the one we have constructed through our own personal choices is difficult. This is often because of our innate tendency to validate our decisions, even erroneous ones, by focusing on “desirable outcomes” and “good intentions.”

I recall once speaking with a woman who had given birth to a little boy out of wedlock. She was raising him as a single mom. He was a source of endless joy and blessing to her and to her extended family of brothers, sisters, aunts and uncles. Yet in a moment of candor, she admitted,

“Although I love my son dearly, and I can’t imagine my life without him, I’ve also come to see how it would have been better if I had chosen not to have sex before marriage. I could have, and should have, followed another path.”

By giving herself to the man she hoped might one day be her husband, she supposed she was entering onto a path towards fulfillment. She soon came to realize, though, that her son would be deprived of the presence of a father figure, and that he was subject to various other difficulties as he grew up because of the choice she had made.

Whenever we choose to follow a path that involves intrinsically immoral choices, we necessarily mislead ourselves about the best total state of affairs that could have been ours. We usually also bring harm to others because of such choices.

For the intrinsically disordered choice of in vitro fertilization, it can be doubly difficult to see the harmful nature of the decision we are making because we direct our attention so intensely towards the baby we yearn for. Couples who do in vitro fertilization are doubtless convinced that the best total state of affairs for them would be to have a child, regardless of the steps it might require.

In the conversation with the husband and wife who attended my talk, they admitted that their own strong parental desires had gotten the upper hand in their decision-making process. They also admitted they were beginning to see a bigger picture: how a third party, an anonymous laboratory technician



in the back room of the clinic, had actually produced their kids, reducing their parental and procreative role, in effect, to mere donors of sex-cells; how pornography and masturbation impinged on the origins of their own children; how they had produced a plethora of children, with some frozen, and others discarded along the way.

The attraction for children can be so strong that it can prevent us from acknowledging honestly the evil aspects that may be interwoven into certain choices we make. We can mislead ourselves into thinking that our desires are worthy to be achieved at any cost. It is but a short step to ruin if our own desires become the final arbiters of right and wrong, and if we suppose that it’s really up to us to determine what constitutes the best state of affairs for our lives. By granting our own willfulness center stage, we end up undermining the very blessings we seek for our life and for those around us.

Infertile couples may believe they have a right to children, when in reality they possess no such right, because the deeper truth is that children are always meant to be a gift, freely given by the Giver of gifts. Marital acts are a way of “petitioning the Giver for his gifts.” By insisting on or demanding the gift (through in vitro fertilization), the child is no longer that “gift” but a kind of entitlement or project to be realized. After all, if we demand and force a “gift,” is it still truly a gift?

Infertile couples too often may not have paused to reflect on the possibility of another path, nor fully considered the various other important and humanly fulfilling ways of expressing their marital fruitfulness, ways that might include foster parenting, teaching, becoming a “Big Brother/Big Sister” to needy children in the community, or the generous decision to adopt a child.

Reprinted with permission. Rev Father Tadeusz Pacholczyk, Ph.D. earned his doctorate in neuroscience from Yale and did post-doctoral work at Harvard. He is a priest of the diocese of Fall River, Massachusetts, and serves as Senior Ethicist at The National Catholic Bioethics Center in Philadelphia. See www.ncbcenter.org and www.fathertad.com.

