

New Reproductive Technologies

Brief to the Royal Commission on New Reproductive Technologies The Social Action Commission of the Evangelical Fellowship of Canada

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Introduction

The Evangelical Fellowship of Canada (EFC) appreciates the opportunity to appear before the Royal Commission on New Reproductive Technologies. We understand the difficulty of your task and hope that our suggestions for limiting new reproductive technologies to beneficial purposes will be useful to the Commission as it deals with these complex issues.

The major dilemma is this: On the one hand we sympathize with the plight of infertile couples who will go to almost any length to have a child. On the other hand, we recognize the dangers of technologies whose use, even in the best circumstances, could be ethically objectionable and destructive of human relations. Also, the money these technologies require cannot be spent on other urgent social or medical needs. The question is, How far can society go in researching and applying new reproductive technologies without causing too many problems, running too many risks, and incurring disproportionate costs? This is an environmental problem of sorts, where we are the environment.

We believe in the dignity of human life and in the value for human life of family and parenthood. On these bases, we offer the following possible answers to this difficult question regarding limits of new technologies.

A Focus on Children

We would begin by focusing on the fact that reproductive technologies are concerned with conceiving, bearing and raising children. Yet, it is hard to escape the impression that it is the desires of adults, both those who wish to have children and those who wish to practice medical research, that usually have centre stage in any deliberations around the reproductive technologies.¹

In section (e) of the Royal Commission's mandate the question of whether there are "rights" to parenthood is properly raised, yet it is to be considered only in terms of its "impact" on children. But surely, at least the status, if not the rights, of children should be central to the discussion, not just "impact". Decisions about what has an "impact" on children or on anybody are notoriously liable to be swayed by the wishes of the more powerful. We see this often in environmental and native issues.

The very words "reproductive technologies" tell us something about what really happens when we get involved with them. The term, "produce," takes on a sense of "manufacturing," as though children were "produced" the same way that ice cream or shoes are. The term "reproduce," if anything, makes it worse. Even the sense of making something is lost. The focus is turned back on ourselves. What can be "reproduced"? Only someone or something can reproduce itself. I may reproduce myself, you may reproduce yourself, she may reproduce herself, but no one reproduces someone else, or even something else. The focus is on us indefinitely extending ourselves into the future. The fact that a child with a life of her own has been born (or even "produced") is secondary, perhaps lost sight of entirely.

We are aware that the Royal Commission did not write its mandate or coin the expression "reproductive technologies." Nevertheless, it is vitally important that we use our words carefully and seek to discover what they imply. This is not merely a theoretical or esoteric matter. It concerns the practical and concrete question of how we think about what we are doing. We have learned from the women's, environmental and civil rights movements how crucial our vocabulary and mindset are to opening or closing a whole world to us. We must not be so naive as to simply accept the words presented

to us by various lobbies - and then back off from the actual meanings of those words.

We need to ask ourselves, for instance, what effect the “making” of a child, by means that obscure parenthood, has on the child herself. Many children already suffer crises of identity through confusion about their origins. Many native children raised in non-Indian homes provide warning examples of this. Our concern is that, unless limits (such as those suggested below) are placed on the use of reproductive technologies, many children born out of their application will have no sense of parents or of personal history. They will be no more than consciousness adrift in the universe.

The second thing we should ask is, are we helping to beget and conceive human beings or are we instead trying to make human beings? The distinction is important.

What we beget and conceive is like us, it springs from us, it contains, in a way, a part of us. We share a common human nature and a common human destiny. We share a fundamental equality. We will beget and nurture and educate a child, and hope, with love, to help shape his or her future life. But we know that it is another life, a person who will grow beyond us and then stand alongside us. He or she will care for and love and question and challenge us, as we have him or her.

But a thing made is a thing unlike us. Whether a shoe, a car, a sculpture or a design, it is other than we are. To the degree that we make children, we start to treat them like other things we have made and not like other human beings. We cannot help designing them to serve our needs. Yet we all know that that is precisely what children are not supposed to be.

This is not merely fanciful speculation. Many, if not most, surrogate mother contracts specify that children with handicaps (“defective merchandise”) can be returned, sometimes with a full money-back guarantee. No natural parent ever had the right in western civilization, to return an infant to the manufacturer, mainly because no human being has ever had the right to view another human being as “defective.” Do we really want to alter that understanding?

We also already have the situation where a child’s sex can be predicted through amniocentesis. Abortion often results when the child is not of the correct gender. It won’t surprise many on the Commission to learn that the “correct” gender is the male gender. We might pause to reflect that amniocentesis was originally developed to save lives in utero by prenatal blood transfusion. It then became a tool for detecting genetic disease, sometimes leading to abortion. But in some countries it is now

frequently used to detect and abort females. This illustrates the danger of accepting a development which helps a few while remaining oblivious to what will really happen in the world at large.

A Focus on Parenthood

New reproductive technologies could change our society’s understanding of family and parenthood. The danger is that biological ties and parenthood will become unrelated. At worst, parenthood will be reduced to a transaction - a deal depending solely on the will of the adults who make it.

The glamour of reproductive technologies tends to hide the fact that in many cases a child is not only being made but is being donated, given away or sold.

We have already seen in U.S. court decisions, involving artificial insemination by donor (A.I.D.) and surrogate motherhood, the legal negation of parental ties and relationships. In many court cases directly contradictory arguments have been offered and accepted. For example, in the case of A.I.D. the argument is that the “genetic father” merely acts as a “donor.” He has no tie, or stake in, or responsibility for the child. Indeed the whole process is easier if he is anonymous and/or drops out of the picture altogether. The sperm is often discussed separately from the donor: it comes out of “banks.” It is understood that genetic fatherhood carries with it no intrinsic parental tie.

In the case of “surrogate motherhood,” bearing a child for nine months is considered a parental irrelevance. In the recent case of Anna Johnson versus Mark and Crispina Calvert, Judge Parslow ruled that “a surrogate carrying a genetic child for a couple does not acquire parental rights.”²² Ironically, he asserted that genetic make-up has precedence over everything else, quite opposite to the usual finding in an A.I.D. case.

What of the case where a husband “donates” sperm, another woman “donates” an egg and the embryo is transplanted to the uterus of the wife? Are we likely to say that the “egg donor” is in fact “the” or “a” real parent? If we were to follow the lines of many parent decisions, we would not.

And so we arrive at a situation where each of the possible biological parents can be ruled out (or in) as a “genuine” parent. As Oliver O’Donovan has pointed out, “from now on there is no knowing what a parent is.”²³

In a court case arising from this situation, who gets to be the “parent” or “parents”? So far, the only consistent theme in judicial decisions is that parenthood is somebody’s will to

have a child produced. We now have contracts (“voluntary “ - i.e. willing - agreements) specifying, on no grounds other than will, which of the cooperating parties will be treated as a parent. All the components are legally conveyable, that is, they are treated as property.

If, in fact, there is no biological tie which makes one a parent in the old, factual sense, then, some might ask, why bother with the question of tie at all? If none of the biological cooperators are to be considered parents, some say society should respect whatever people want, whatever a contract says.

Each case denies that a particular biological connection - be it the “donation” of sperm or ova, or the “lending” of a womb - establishes a parental relationship. Taken together the three instances deny that any biological relation is relevant to parenthood. If this is so, why be concerned with any biological connection at all? A couple could simply find a sperm donor, an egg donor and a womb lender, and stipulate that the product be handed over at the end.

What would stop us from this unless we say that a biological tie is an essential and necessary feature of parenthood? In such a view, parents cannot forfeit their responsibility and parental “right,” nor can they convey their child to another party.

If we say that some form of biological parent is in fact a parent, then what is happening is that a parent is handing over his or her child to someone else. In the case of a “surrogate,” this is especially poignant. She is the mother, both genetically and by bearing the child. Yet by legal arrangement she is described as a “surrogate.” She is not a surrogate in any real sense; this convenient designation simply describes what the couple would like her to be.

Many of the key features and twists in reproductive technology are not new medical technology but new legal technology. In many cases, we are simply introducing new legal categories to circumvent laws regarding custody, adoption and baby selling. Essentially, we are developing legal techniques to convey babies as if they were the property of the parties to the contracts, regardless of the biological role of the parties. As the New Jersey Supreme Court rightly said in relation to the celebrated “Baby M” case, “the money is being paid to obtain an adoption . . . not . . . for the personal services.”⁷⁴

If all these arrangements were being made after the babies were born, then the situation would have become clearer sooner. What people are really asserting is an ownership of babies, a power to assign parenthood. We would call it a trade

in babies. Because the contracts are being made before conception, we allow ourselves to be kidded that what is being provided is merely a “service” or a “donation.” In reality, no one wants the “service,” only the baby that results.

It should be noted that up to this point we have not mentioned commercial surrogacy, or other arrangements. The prospect of commercialization (which would require employees rather than volunteers, to be successful) certainly makes these situations worse by introducing complex baby-selling schemes.

With commercialization, the power of money becomes critical. A new technology always transfers power to those who can afford it. The rich will have the money to pay for techniques and surrogates. The poor, particularly women with few employment and life skills, will accept money to provide their “services.” In effect the rich will buy parental rights to (good quality only) children from the poor. The poor will, presumably, be left with “defective” or “poor quality” children.

An important social consideration is this: traditionally, parents have had to accept the children they produced. After all, our children are what we are. But people who feel comfortable with complex contracts for children with designer genes may not sense a commitment to accept whatever they get. Indeed, they may very well view children with problems as a violation of their rights. This could complicate social problems considerably.

Treatment, Not Circumvention

Most reproductive technologies do not cure infertility. They bypass it. The unfortunate person remains infertile. What happens is that another party is brought in to do duty for them, and then they hand over the product of their parentage. Thus the technologies leave the condition of the infertile person as it was before.

We believe that the resources available should be directed to the restoration of fertility - of begetting and conceiving - not to the development of glamorous techniques which probably entail additional, unforeseen social problems.

Weighing the Costs

There are many reasons why people have difficulty with raising children. When one in ten children in the city of Toronto use food banks, when families are unable to find decent housing, when there is unemployment, poverty and violence, then there are serious barriers to bringing children into the world. Physical infertility is a source of grief that calls

for support from all of us. Yet it exists alongside other widespread painful barriers to parenthood, concerning which society has clear, accepted obligations.

We realize the Royal Commission's mandate is to look at reproductive technology, not poverty, social policy or family breakdown. We are not suggesting that it focus on these other matters instead. However, even within its mandate the Royal Commission must recognize this context for its deliberations and ask how this context should affect our view of the place of reproductive technology.

In particular, we must raise the question of funding priorities. Many forms of reproductive technology are quite expensive, especially when the rate of failure is considered. The methods are technically ingenious, but they do not address human problems in the most effective way. The Royal Commission will therefore need to consider the proper balance between social supports to parenthood and technical aids.

Some would argue that we "must" go in this direction for the sake of human progress and development. But as many issues show, there is serious contention about what the direction of development should now be. We must not allow the discussion to be pre-empted by the assumption that only certain choices, perhaps undesired by most, should be considered progress and development. (This problem of defining progress exists in other issues as well. For example, no one wants their city's major boulevards to become a jungle of fast food outlets, yet, this too has been called "progress," and claimed, incorrectly, to be inevitable.)

Genetic Manipulation

Genetic manipulation techniques put awesome possibilities within human grasp. Yet human purposes are often not so elevated.

A child could be programmed to come into the world already shaped toward a purpose, already fixed with a goal in mind. The goal may be a high I.Q. or it may be blue eyes and curls.

The examples just mentioned would be considered "normal" if genetic manipulation techniques were to become available. They are the things many parents wish for in children. They are already reflected to a degree in the criteria used for donations to sperm banks. And if the example of prenatal sex detection is any indicator, genetic selection techniques would be a powerful tool for reinforcing prejudice.

We must refrain from trying to (re)design human beings or to perfect them according to our own notions. The techniques we

are discussing may have a place in alleviating suffering and combating disease, but should never be used as a means of reinventing human beings. This goes beyond, but certainly requires, the banning of cloning, crossing human and animal genetics, ectogenesis and parthenogenesis.

Conclusion

When we think about technology we must not do so in the light of a dewy-eyed vision of progress. We must judge our human record with technology against our capacity for disaster. The Valdez oil spill, the tragedy of thalidomide, the still-present cloud of a nuclear holocaust, global warming and deforestation are all reminders that technology-in-practice will always betray at least a part of technology-in-promise. Also, technologies can develop a life of their own and reinforce existing values. The proposals and guidelines of the Royal Commission must be framed accordingly.

The growing scale of environmental damage, the growing threat of ecological catastrophe and the growing awareness of our ignorance have caused us in recent years to adopt a more humble attitude toward the natural world. We can no longer seek to bend it exactly to our will. Rather, we must learn to respect natural dynamics, to heed them, to learn to live within their limits.

The same is true with regard to human nature. It is not an object to be controlled, manipulated or shaped at will. We must tame our desire, not our nature. We must live within the limits of our own humanness.

In response, then, to the question, "How far should we go with the new reproductive technologies?" we would suggest the following principles as guidelines within which the Royal Commission should meet the more specific questions posed by its mandate:

1. No person has a "right" to any other person (just as there is no "right" to adopt), nor can one person "make" another according to his or her own wishes. For these purposes, embryos should be considered "persons" and plans for manipulation prior to conception should be viewed as plans for creating persons.
2. The introduction of a third, fourth or fifth party into the parenthood equation should not be legally allowed.
3. The focus of new reproductive technologies should be on helping couples overcome infertility problems so that they can beget and conceive their own children.
4. The costs of new reproductive technologies should be weighed against all other means of supporting parenthood.

5. Any grounds on which it is forbidden to discriminate against adults should also be forbidden as grounds on which to select children.

6. The purpose of genetic manipulation techniques should be to alleviate disease, not to produce perfect individuals.

Endnotes

¹ Some recent U.S. custody cases ostensibly have decided in the interests of the child.

² *Globe and Mail*, October 23, 1990.

³ Oliver O'Donovan, *Begotten or Made*, Oxford University Press, p. 48.

⁴ Supreme Court of New Jersey in the matter of Baby M, argued September 14, 1987, decided February, 1988, p 21.