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*Father LoGatto brings to this second and final article on artificial insemination a professional background and training in social work equal to the legal ability which he manifested in his previous (July 1955) article. Artificial insemination by donor is wrong, he says, on ethical, moral, psychological and sociological grounds.*

# ARTIFICIAL INSEMINATION: II

## Ethical and Sociological Aspects

ANTHONY F. LOGATTO, M.S.S.S., LL.B.\*

**T**HE SUBJECT OF artificial insemination poses complex legal problems,<sup>1</sup> most of them as yet unsolved. Of even greater concern, however, are the involvements of an ethical and sociological nature. These must be carefully pondered, explored, and evaluated for ultimately the courts and the legislature will attempt to resolve this problem not in terms of law alone but also in terms of the practical effects the solution will have on the child, the parents, family life and our society in general. This is no easy problem. It has subtle ramifications of an ethical, sociological, psychological and psychiatric nature.

The proponents of artificial insemination by donor (AID) hold that it relieves the plight of many healthy, well-qualified young couples who desire anxiously to have children of their own. The opponents (of whom the Catholic Church is one) agree wholeheartedly as to the fulfilling role that children play in the home, but disagree as to the means used to secure this end. Not only does artificial insemination fail to solve the problems of the childless couples but it creates additional ones of an even more serious nature.

Ethics is a matter of law, the natural law which governs the conduct of moral persons. It works by way of principles, by inductive and deductive reasoning, by a study of the nature of man. Artificial insemination,

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<sup>1</sup>See 1 CATHOLIC LAWYER 172 (July 1955).

on the other hand, has to do with babies, motherhood, pink nurseries and lullabies. This explains, perhaps, the confusion in the minds of many and the variety of viewpoint on a matter so very fundamental that one might expect unanimity. Law and sound morality demand hard and clear thinking where the emotions are an element to be considered but never as the controlling factor.

## I. Ethics and AID

### A. Nature of Marriage

By the design of an all-wise and good Creator, marriage was suited to the nature of man in a most marvelous fashion. It fulfills the needs of society by being the source of new life and of its continuance in existence. Leading to the family as to its logical and natural end, it provides the optimal environment in which all the parties to it may seek the perfection of their nature. No institution in the history of mankind has been so tenacious, so intimately bound to the welfare and well-being of society. Upon it has depended survival, growth, the degree of culture and civilization achieved by society.

To preserve this basal institution the Creator placed about it safeguards, safeguards beyond the reach and will of man. Thus marriage is a contract, but its terms, unlike other agreements of men, are fixed as to all essentials. For here we have no mere meeting of the minds but rather a social contract in which society has a stake. Indeed, society is a third party with important rights, and interests. Since man is a free agent, enjoying the prerogative of self-determination, it follows that he can, and often does, violate the interests of nature. But he does so with serious damage to self

and society; for nature, though a kind, even a lavish mother, is also inexorable in retaliation.

### B. AID is Adulterous

Say the proponents of AID: only adultery is wrong; but adultery is sexual intercourse and there is no intercourse here; so how can it be wrong? In one fell swoop, the proponents of AID thus strip marriage, at least so far as the procreation of children is concerned, of every moral element with the exception of sexual intercourse with third parties. This sort of reasoning does violence to the traditional concept of marriage. Marriage is an all-containing, all-embracing and all-pervading union of two persons in mind, body and soul; an exclusive bond of rights and interests which precludes all that in any way may conflict with this all-inclusive oneness. And as for procreation, the child is the fruit of the home and the completion of conjugal love. The words of Pius XII to the Fourth International Congress of Catholic Doctors are apt:

Only the marriage partners have mutual rights over their bodies for the procreation of a new life and these are exclusive, non-transferable and inalienable rights. So it must be, out of consideration for the child.<sup>2</sup>

### C. AID Child Deprived of Natural Protections

The exclusiveness of the marriage bond is related primarily to the needs of the child. In his talk to the Catholic doctors the Holy Father points out that:

By virtue of this same bond, nature imposes on whomever gives life to a small

<sup>2</sup>Address by Pope Pius XII to the Fourth International Congress of Catholic Doctors, Sept. 29, 1949, *Atti del IV Congresso Internazionale dei Medici Cattolici*, o.c., p. 13 (1950).

creature the task of its preservation and education. Between the marriage partners, however, and a child which is the fruit of the active element of a third person — even though the husband consents — there is no bond of origin, no moral or juridical bond of conjugal procreation.<sup>3</sup>

This absence of a natural bond between the husband and the child is a fundamental defect of AID and has serious repercussions in terms of the welfare of the child. The child is left without the natural protections and safeguards which nature has placed around it.

[T]he child is born into the world not only without the natural guarantee of fatherly protection and love that he should have, but rather in circumstances which of their nature are apt to deprive him of his affection.<sup>4</sup>

Indeed the AID child is victim of many wrongs. He is not who he thinks he is. He comes from a strange source; he is denied a fundamental possession — the right to know his own father to whom he is bound by ties both biological and spiritual. He is truly the “filius nullius” of common law. The irony of it all is that this is not accident or mistake; not an unfortunate occurrence, but rather the carefully laid plans of parental urges gone wrong and of professional skills misused.

## D. AID Leads to Deception

### 1. Deception of Child

Whereas secrecy is proposed for the welfare of the child, actually it perpetrates the greatest injury on the child and on society. For secrecy here means deception rather than privacy — deception of the child, of

<sup>3</sup>*Ibid.*

<sup>4</sup>Kelly, S.J., *The Morality of Artificial Fecundation*, 101 *Am. Eccl. Rev.* 109, 117 (1939).

relatives, of friends and of society at large, all of whom have a right to reliable knowledge of identity and true relationships. It calls for an intent to deceive by the inseminating doctor and by the doctor assisting at the delivery, if he be acquainted with the facts. This mass deception of society is disastrous and fatal to the implicit trust which people have and must have in one another. Imagine a state of society where thousands and thousands of innocent people go through life deceived as to their very identity. How do the parents of these children feel as they embrace and fondle a child whom they are deceiving forever, and who is only partly their own and partly of some unknown, almost fictional, donor, Mr. X? How do such parents arrive at a state of complete candor and good faith with the child? One author goes so far as to consider the element of secrecy the ultimate consideration in opposing AID:

It is from this fact that secrecy is regarded as essential that the most obvious objections to AID arise. In three cases known to me in which it was contemplated, in advising strongly against the suggestion I felt no need to do more than emphasize the all-round and life-long deceit involved and the unhappy status of any child so born should the truth become known, against which there can obviously be no absolute guarantee.<sup>5</sup>

### 2. Falsification of Records

The falsification of records is wrong in itself. It involves misrepresentation not only by the mother of the child, but by her husband and sometimes by the physician.

Some foresee other unfortunate and important consequences: “In proportion as

<sup>5</sup>Bezzant, *Artificial Human Insemination*, *Fortnightly*, 78, 79-80 (Feb. 1949).

birth by AID became common, so registration records would become worthless alike as evidence of parentage and for the study of heredity."<sup>6</sup>

### E. AID Leads to Incest

There would be the serious and increasing risk of marriage of half-brothers to half-sisters, unconscious incest. Although such alliances would be null and void in most jurisdictions when the facts are discovered, the physical, eugenic and sociological results of these unions are quite unpredictable and might be disastrous.<sup>7</sup> Apropos of this, British doctors have been concerned about the possibility of incest and have placed a limit of not more than one hundred inseminations from a single donor.<sup>8</sup> It seems that American doctors proposing AID see little cause for alarm in this respect since the risks, they claim, are no greater than in adoption cases. It could happen, and has happened, that a brother and sister who have been adopted by different foster parents inter-marry, but this possibility is extremely slight. In AID the number of children fathered by one donor can run as high as a hundred or more, and these children tend to be in the same geographical area. Add to this the fact that in adoption, an unfortunate or tragic set of circumstances, *de facto* in existence, is being remedied whereas, in AID the child is by plan and premeditation brought into the world exposed, among other things,

<sup>6</sup>*Id.* at 82.

<sup>7</sup>*Ibid.*

<sup>8</sup>Lees, *Born to Order*, *Collier's*, April 20, 1946, cited in Schwartz, *Some Legal Aspects of Artificial Insemination*, 18 *Queens Bar Bull.* 114, 115 (Feb. 1955).

to the possibility of incest. These same American doctors further note that such incestuous matings would not lead to harmful results unless both partners had faulty inheritances.<sup>9</sup> To be observed here is the gradual demoralization, the petering out of the moral sense. It doesn't matter too much if incest occurs; it is only a possibility that poor genetic strains may get together, and produce a real weakness.

This group is obviously unaware that the real objection to incest by the Church and by civilized society is not biological but rather sociological and moral — the preservation of purity within the familial group where intimacy of living necessitates absolute prohibitions upon any sexual relationships except between spouses.<sup>10</sup> This easy, casual disinterest on the part of doctors favoring AID toward the possible multiplication of incestuous unions is evidentiary of a lessening moral sense. As one whittles away the moral fibre, the chips get bigger and they fall where they will. The lack of concern here is the main concern.

### F. Abdication of Duties by Donor

Another point of critical importance yet given no mention in the AID literature is the wholesale abdication of rights, duties and obligations by the donors in artificial insemination. One donor might be the father of scores of children yet never know them, or support them, or take the slightest part in their nurture and upbringing. What of the natural obligations of a father toward

<sup>9</sup>Ratcliff, *Are These the Most Loved Children?*, *Woman's Home Companion* 47, 54 (March 1955).

<sup>10</sup>Cooper, *Birth Control* 10-11 (N.C.W.C., Wash., D.C. 1923).

his offspring? May he lightly shift them from himself to others without the slightest concern?

### G. Means

The final consideration of a moral nature is the procurement of seed from the donor. The method generally acceptable to doctors is masturbation. Voluntary self-pollution is against the natural law and to this there is no exception for the act is intrinsically evil.<sup>11</sup> The reason, of course, behind this position is the use and frustration of a specific function. Masturbation reduces to solitary and individualistic use sexual faculties intended by nature to be used in association. It disregards the truth that with those powers God provides physiological means of exercising them in a joint and common act. Once again, AID by requiring associated acts which are also evil promotes a concomitant disregard for law and morality.

## II. Evils of AID

### A. Psychological

When evaluating the effects of AID, of no little concern are the psychological and psychiatric boomerangs lying deep in the subconscious and unconscious layers of the mind. Psychoanalytic and clinical experience have revealed unhealthy, distressing and disruptive influences in the emotional lives of the persons who infract the moral codes, strong conventions and the well-established mores of society. These are the more sinister in that very often they work at a hidden depth in the mind, unseen yet exercising their disturbing influence on the

personality. So true is this that several specialists in New York have refused to consider the application of Catholic couples for AID.<sup>12</sup> The psychiatric effects are too damaging. What is true of Catholics must be true to a large degree of others especially in the western world which is largely the product of a Judaeo-Christian culture holding high values in matters of family life and marital purity.

### 1. Mother

Specifically, the reactions of the parties in AID express themselves in irreconcilable conflicts such as in the mind of the wife who knows that, try as she may, she can never wipe out completely the stubborn fact that she harbors in her womb, and later in her home, the offspring of a man other than her husband. The element of guilt may be very sinister here with its compensating mechanisms of repression, over-protectiveness toward the child and feelings of unworthiness. Always the thought persists, is she her husband's wife when she bears the children of another? Further conflicts arise as feelings of hostility emerge, even though sub-conscious, toward the husband; resentment that he was unable to cooperate in her motherhood, the very function so intimately bound to the nature of women. In the stress and strain of everyday living how often will those thoughts and conflicts arise? If matters reach a peak, will the wife chide his impotence and remind him of the humiliating fact that he is a stranger to his child, no more related to him by blood than to the boy down the street?

<sup>11</sup>Kelly, S.J., *Moral Aspects of Sterility Tests and Artificial Insemination, Medico-Moral Problems* 14, 15 (1950).

<sup>12</sup>Williams and Levitas, *Test-Tube Babies*, N.Y. Post, April 1, 1955, pp. 4, 24, col. 4. For a general discussion of the psychological aspects of AID see, Cahiers Laënnec, *L'insémination artificielle*, Lethielleux, Paris, 1948, p. 124.

## 2. Husband

As for the husband, the reactions to sterility are well known to clinicians and social workers.<sup>13</sup> But the complication that aggravates AID is the fact that the child ever remains the symbol of the husband's impotence, his failure as a man. The feelings of inadequacy, inferiority and guilt, the frustration of his birthright to propagate, become intensified. These feelings are hard to accept and suppression brings its own unwholesome consequences.<sup>14</sup> An interesting instance of the foregoing is the allegation made by the plaintiff wife in the *Strnad* case — "During said pregnancy [caused by AID] defendant's [husband's] attitude and treatment of plaintiff changed; defendant behaved as if he were violently jealous of the anonymous donor and otherwise abused and mistreated her."<sup>15</sup> More unusual still is the case of a husband who became obsessed with the idea that the child conceived by AID was his own. When the wife asked for another insemination the physician refused for the reason that if a second child were conceived the husband would have to face the fact again that he was not the father of the first with possibly shattering emotional results.<sup>16</sup> Another husband, when broached by his wife with the suggestion of AID said very honestly ". . . it was the same as being asked to lend out your wife."<sup>17</sup> After a successful insemina-

tion and birth of a child, this same husband admitted ". . . it stung him when old friends discussed whether baby looked like her mother or 'father.'"<sup>18</sup> The husband and wife confessed in this case that they had been highly disturbed by the newspaper report of the *Doornbos* case.

## 3. Donor

The forgotten man in most of these discussions is the donor. One writer tells of the uneasiness some of them show — "When I asked one of them if he wished his unknown children well, he grew defensive. After a while he said — 'Of course I wish them well, and I wish myself well too. I don't ever want to look at a strange child's face some day and see my own.'"<sup>19</sup> A strange attachment develops at times between a wife and the donor. Some women anxious for a second AID child will have it only if they can have the same donor again.<sup>20</sup> One wonders if the mothers here are living a ghost romance. Shocking at times are the extremes to which women will go in seeking certain donors. Often wives will request that the donor be a brother of the husband or even his father. While such requests are denied, it is an index of the deadening of the moral sense in women who wish personal fulfillment more than the purity of their home. Were doctors to accede to these requests, it could happen that a wife is also mother of her husband's half brother and that the AID child is his reputed father's half brother. What a revolting throwback to the Greek Electra!

Illegitimate?, *McCall's* 33, 60 (May 1955).

<sup>13</sup>*Ibid.*

<sup>14</sup>*Id.* at 64.

<sup>20</sup>Ratcliff, *Are These the Most Loved Children?*, *Woman's Home Companion* 47, 54 (March 1955).

<sup>13</sup>See Lamson, Pinard and Meaker, *Sociologic and Psychological Aspects of Artificial Insemination with Donor Semen*, 145 *J. Am. Med. Ass'n* 1062, 1064 (April 7, 1954).

<sup>14</sup>Di Francesco, *La Fecondazione Artificiale nella Donna* 45, 49, 100 (1949).

<sup>15</sup>*Strnad v. Strnad*, No. 118259 (Dist. Ct. Okla. 1949).

<sup>16</sup>Ratcliff, *Are These the Most Loved Children?*, *Woman's Home Companion* 47, 54 (March 1955).

<sup>17</sup>Lang, *Artificial Insemination — Legitimate or*

## B. Sociological

### 1. Effect on family

Artificial insemination "is socially contentious. Nothing in modern times has so seriously challenged the basic concept of our society founded as it is on the biological tripod of father, mother and child which we call the family unit."<sup>21</sup>

The most devastating effect of AID — on the sociological level — is the wedge that the AID forces into the monolithic structure of marriage. Society has jealously guarded the sanctity of the home, the purity of the marital relationship, the honor of parenthood; the gradual acceptance of artificial insemination by more and more people will gradually be the destruction of these qualities.

Perhaps one of the most sinister aspects of AID is the reduction of procreation to a stark, loveless form of generation. Nature intends children to be born only of the married love of parents, whereas in AID, as in promiscuity, there is a relative indifference as to the identity of the other party, granted only that the end is attained. AID requires anonymity of co-partner, complete physical, emotional, mental and moral detachment between partners cooperating with the Supreme Being in procreation. This is a grotesque deformation of so sacred and so intimate a relationship as sex and the natural generation of offspring. It is the supreme form of the depersonalization of sex.

[I]n AID human life is initiated as the result of a momentary mechanical process entirely divorced from the spiritual, mental, emotional and physical lives of its parents. If extensively practiced it would inevitably

degrade the whole conception of personality and intensify that tendency toward the reduction of life to mechanism which is one of the most sinister features of our time.<sup>22</sup>

### 2. AID not like adoption

#### a. Selectivity of parents

Some consideration must be given to the selectivity of parents chosen by doctors to have an AID child. In AID literature much stress is laid on the painstaking care exercised by the inseminating doctor in selecting only the best of applicants in terms of physical and mental health. While the medical doctor is certainly in a position to judge the physical conditions of prospective parents, serious question arises as to how prepared he is to handle the psychological and psychiatric aspects, which are of even greater importance. The practices of reliable adoption agencies are helpful here. Social workers, psychologists and, when needed, psychiatrists, form a team to help select prospective, adoptive parents. These workers are competent by specialized training and experience to evaluate the emotional factors that go into the satisfactory adjustments required in adoption. The maturity of the couple, their warmth, their adjustment to each other, the capacity to accept a child and the stability of their marriage and especially their attitude toward their own infertility, are critical points of inquiry. Many interviews are required before the adoption agency feels it has made a proper selection both of parents and of child. This is followed by a placement of usually six months to a year for purposes of observation and study and during that time mutual adjustments of parents to child and child to parents are

<sup>21</sup>Caddy, *Artificial Human Insemination*, 12 N.Y. Co. Lawyers' Bar Bull. 191, 195 (1955).

<sup>22</sup>Bezzant, *Artificial Human Insemination*, *Fortnightly*, 78, 87 (Feb. 1949).

carefully watched. Unsatisfactory placements are discontinued. This intensive screening and diagnostic approach are often beyond the capacity of medical doctors — “Medical practitioners are generally ill prepared to evaluate such matters. . . .”<sup>23</sup> Clinical teams of doctor, psychologist, psychiatrist and social worker try to offset this deficiency of the purely medical approach, yet many AID practitioners, if not the majority, are functioning alone without these safeguards. Only the Lord knows with what ultimate results!

### *b. Emotional factors*

In adoption there is no illegality involved, no tinges of immorality and guilt.

But since it (AID) involves the invasion of a woman's body for purposes of reproduction by a man not her husband, it does overstep the bounds of the conventional social mores. On that account certain special emotional reactions may be expected over and above those that occur in ordinary cases of involuntary sterility. It is particularly important, therefore, to survey the psychological aspects of the subject. . . .<sup>24</sup>

Psychic reactions to AID are interesting. Some clinicians feel that certain women

derive a peculiar satisfaction from the coldly scientific nature of the operation. Successful results create a feeling of superiority and triumph over the male, as well as a sense of fulfillment. No doubt large numbers of women would gladly receive this sort of help were it not for extrinsic deterrent influences. The procedure is new, strange and radical. It is vaguely associated with suggestions of legal and moral irregularity.<sup>25</sup>

<sup>23</sup>Lamson, Pinard and Meaker, *Sociologic and Psychological Aspects of Artificial Insemination with Donor Semen*, 145 *J. Am. Med. Ass'n* 1062, 1063 (April 7, 1954).

<sup>24</sup>*Ibid.*

<sup>25</sup>*Id.* at 1064.

It must not be assumed, however, that all women think that way. The writer has had the occasion to learn the attitude of several married women toward AID. One woman, a housewife, said that the mere suggestion of the conception of a child of an unknown man by artificial insemination “causes intense emotional revulsion and rebellion. It is base, cruel, ugly and inhuman.” Another said she wanted to know her children, to see in them her husband, not the shadow of a stranger; she could not, she said, hold the child of another man without feeling repulsive and unclean. One more woman of higher education, said “the man may become so ashamed of himself that he resents being incomplete in something so basic and inherent in all creatures that he looks upon himself with repugnance, feels unequal with others, despises his wife, and ends up resenting God.” One woman said “I see the wife as a selfish, egotistical, emotionally disturbed person who cannot accept the limitations of a childless marriage and will stop at nothing to bear *her own* child.”

The opinion of some writers is that what makes wives hesitate more than anything else is the fear, sometimes well founded, that their husbands will not be able to make both the immediate and the long term adjustments necessary for a happy outcome.<sup>26</sup> According to these writers the majority of husbands have to overcome some degree of reluctance and hesitation toward artificial insemination and this they succeed in doing for a variety of motives. But say the writers

no type of case requires more careful psychological evaluation, since it is always possible that the man's new attitude, however sincerely he believes in it at first, may prove to be unstable and transitory. In some future emotional crisis he might even react so

<sup>26</sup>*Ibid.*

strongly as to develop feelings of resentment, hate and disgust toward the whole situation.<sup>27</sup>

### *c. No deception in adoption*

Dr. Ruth W. Berenda, psychoanalyst and former member of the Psychiatric Clinic of New York's Domestic Relations Court, argues that the secrecy of artificial insemination can endanger a marriage.

"When a couple adopt a child," she says, "they admit openly they cannot have one of their own. But when they are the parents of an artificially inseminated child they often conceal the true facts and try to present a front of normality. The result — both a self-deception and a deception of the world — can be harmful to their relationship." Dr. Berenda also feels that the wife may be tortured by curiosity about the donor. "And I am not at all certain," she adds, "that most stable men would be willing to act as donors."<sup>28</sup>

In the meantime, says one author tired by all the discussions pro and con

[T]his controversial medical procedure inspired by human frustration continues to dispense its balm or blight to the subjects of its shadowy realm — a realm of synthetic triangles, of men who never learn the sex of their children, of other men who wonder whether they are cuckolds or stepfathers.<sup>29</sup>

### *d. Possibility of poor biological strain*

The possibility of incest is a matter of concern from a sociological point of view. AID, if practiced widely, would increase the possibility of persons with the same poor genetic strains intermarrying with resultant grievous effects to their progeny and society.

Despite the contentions of the propo-

<sup>27</sup>*Ibid.*

<sup>28</sup>Lang, *Artificial Insemination — Legitimate or Illegitimate?*, *McCall's* 33, 62 (May 1955).

<sup>29</sup>*Id.* at 64.

nents of AID few medical men have the resources or the time to verify the donor's physical qualifications.

An article in the journal of a leading law school<sup>30</sup> attempts to outline the advantages of the AID child. No instance, alleges the author, of an AID baby born biologically inferior, has ever been reported.<sup>31</sup> Five years later, however, the case of *People v. Warhaftig*,<sup>32</sup> in Queens County, New York, involved an AID baby who was, or appeared to be, mongoloid.

## III. AID not as helpful as claimed

### A. Lack of information

No one is able to measure the far-reaching and subtle repercussions, both conscious and subconscious, upon family solidarity and balance caused by the presence of an AID child. The psychological and psychiatric implications are numerous and so, while many cases appear in court, in which there is no allegation of an AID causality, yet who is to evaluate the subtle influence of the AID factor in the genesis and growth of the severe familial disturbances ultimately leading to law suits? Then, again, it must be borne in mind that the fact of AID is carefully shielded by parents, doctors and donors, out of embarrassment, shame, fear of self-incrimination and for the welfare of the child.

One writer cites the paucity of law suits involving AID as evidence of the family

<sup>30</sup>Comment, 58 *Yale L. J.* 457 (1949).

<sup>31</sup>*Id.* at 466, n. 38.

<sup>32</sup>Ind. No. 41-54 (Queens Co. Ct. 1954), cited in Schwartz, *Some Legal Aspects of Artificial Insemination*, 18 *Queens Bar Bull.* 87, 89-90 (Jan. 1955).

balance achieved.<sup>33</sup> Under the circumstances of secrecy shrouding AID, the number of law suits admittedly involving artificial insemination is certainly not supportive of any such claim.

The same author alleges that, in general, the medical profession's diligent screening provides AID children with superior home conditions.<sup>34</sup> The interesting question here is superior to what? If what is meant is that AID is indicated only in instances of assured incomes and better social and cultural conditions, is it the implication of the author that a child born under ordinary circumstances in which his father is actually the husband of his mother is inferior to the AID child? This is preposterous. Even the most ardent advocates of AID admit that insemination is a second best and that before it is attempted natural pregnancy is to be striven for with every technique and skill that the medical profession has to offer. Who then are these children in "inferior" home conditions if not the natural born? Are they adopted children? This is equally illogical since in competent adoption a *de facto* child with known characteristics and circumstances of birth, background, etc., is placed in a tailor-made home and placed under a period of trial and observation to see that the placement is a happy one.

### **B. Destroy sense of social responsibility**

Is it healthy for society to promote and foster a method of procreation wherein the close tie between father and child is completely destroyed? That social sense of responsibility built up so laboriously by society over thousands of years and which

holds the relationship of parent and child as one of the most intimate, most cherished, and sacred of all bonds, is now being gradually worn away by an acid which can cut deeply into the moral fabric which is the warp and woof of society. Nor is adoption a parallel case here for, once again, adoption is curative while AID creates the occasion by design and plan. Whereas in AID, the child is still non-existent, the genetic factors of the donor are inscrutable and once the operation is under way the process is irrevocable. To these considerations must be added the legal, moral and sociological contraindications outlined in this and the earlier article. The proponents of AID, it would seem, are whistling in the dark because they do not know what lurks in the darkness.

### **C. Effect of Childlessness on Home**

A final point of importance is the factor of childlessness and its effect on the home. Proponents of AID have relied heavily on this for winning public approval pointing out that the child keeps the home together<sup>35</sup> and that there is a high correlation between childless couples and divorce. The Catholic Church, of course, is, and has been, the great proponent of the child in the home idea; but in cases of adoption and of artificial insemination, the ability of a child to make and mend homes must be carefully evaluated. Many couples seeking a child through AID or adoption are poor risks. One social worker, reflecting the experience of others in the field, put it thus:

<sup>35</sup>Ratcliff, Are These the Most Loved Children?, *Woman's Home Companion* 47 (March 1955); Guttmacher, The Role of Artificial Insemination in the Treatment of Human Sterility, *Bull. of N.Y. Acad. of Med.* 576 (1943).

<sup>33</sup>Comment, 58 *Yale L. J.* 457, 466, n. 38 (1949).

<sup>34</sup>*Ibid.*

Many couples are really not qualified to have children but don't realize it. We have had couples in here who said their marriage was at the breaking point and that they felt a child would bind them together and possibly save their tottering marriage. . . . We feel that this is too big a job for a 4-month-old baby.<sup>36</sup>

In reference to the point of infertility and marital instability one author says,

It would be a mistake, however, to draw the conclusion that childlessness is the principal and immediate reason for divorce. . . . Most frequently the primary trouble is some combination of the familiar social, economic, and personal maladjustments that underlie all marital discord. Many couples in this unhappy situation voluntarily avoid parenthood by contraception or by separation. . . . [P]arenthood will not strengthen and support a marriage which is shaky almost to the point of collapsing. Children do not assure success in marriage just as the lack of them does not necessarily preclude it. . . . [I]t becomes evident that indiscriminating attempts to give children to the childless can in many cases produce results detrimental to the welfare of society.<sup>37</sup>

Often sterile husbands seek a child by AID out of guilt to make amends to their wives for their own inability. Guilt is a poor motive for wanting a child and can be very disturbing in its reaction on the parents and child. Then again AID is parent-centered rather than child-centered, as is adoption. While the welfare of the parents is important, this must never be at the expense of the child. The child is not a therapeutic tool; parents who are so disturbed by sterility need treatment rather than an AID child.

<sup>36</sup>N.Y. Daily News, June 30, 1955, p. 40, col. 1.

<sup>37</sup>Lamson, Pinard and Meaker, *Sociologic and Psychological Aspects of Artificial Insemination with Donor Semen*, 145 J. Am. Med. Ass'n 1062, 1063 (April 7, 1954).

#### IV. Position of Lay Groups

Few representative groups have taken a position on the subject of artificial insemination. The American Medical Association has kept a guarded silence on the subject. But the American Society for the Study of Sterility, at its recent convention in Atlantic City, pronounced artificial insemination to be a "completely ethical, moral and desirable form of medical therapy."<sup>38</sup> The Society represents 500 medical doctors specializing in the problem of sterility. This is said to be the first formal statement by a medical society approving the practice of artificial insemination. Dr. Haman, the outgoing president of the Society, said that "included in the membership of this society is the overwhelming majority of those who practice this type of medicine."<sup>39</sup> The survey of Koerner & Seymour, however, sponsored by the National Research Foundation for Eugenic Alleviation of Sterility, in 1941, circularized 30,000 physicians in this country who were chosen because of the nature of their work and their association with a type of practice in which occasion to use artificial insemination might arise. Of those, seven thousand, six hundred and forty-two replies were received, and they attested to almost 10,000 pregnancies by AID.<sup>40</sup> Yet Dr. Haman feels that the 500 physicians of his society constitute the "overwhelming majority" of those who practice this type of medicine.

The Federation of Catholic Physicians' Guilds with approximately 4,000 physician members throughout the United States and

<sup>38</sup>N.Y. Times, June 5, 1955, p. 53, col. 1.

<sup>39</sup>*Ibid.*

<sup>40</sup>See Seymour and Koerner, *Artificial Insemination: Present Status in the United States as Shown by a Recent Survey*, 116 J. Am. Med. Ass'n 2747 (June 21, 1941).

Canada, held AID to be a direct violation of the rights, privileges and duties of married life and therefore an attack on the very stability of society itself, which they as doctors are pledged to support.<sup>41</sup> This fact alone, they said, would make the practice unethical and immoral, and hence reprehensible rather than a "desirable form of medical therapy." They added that they wondered seriously if promoters and supporters of the test-tube baby idea have weighed the long range psychosomatic and legal implications of their crusade.

The Journal of the British Medical Association uttered the opinion that adopting a child obviously involves fewer risks and difficulties than artificial insemination from a man other than the husband. There are, it said, religious as well as ethical objections to artificial insemination by a donor.<sup>42</sup>

Among medical men, as might be expected, there is a wide divergence of viewpoint. Some endorse the measure wholeheartedly, others condemn it just as vigorously; many of them are cautious. One medical writer makes the interesting challenge that "human artificial insemination is not properly the practice of medicine within the traditional definition of diagnosing, prescribing for or treating human injury, defect or disease."<sup>43</sup> The same writer asks, somewhat peeved, "Is medical training necessary to perform the mechanical techniques of the procedure?"<sup>44</sup> Another doctor put it thus: "In AID the physician acts as the agent to bring into being a life outside the

marriage relation. Even ignoring the moral aspects of the case, that is new and outside the scope of anything the physician has ever undertaken before."<sup>45</sup>

One doctor, experienced in the practice of artificial insemination, calls it "one of the most gratifying experiences a doctor can have."<sup>46</sup> Referring to the opinion in the *Orford* case that same doctor said: "[I]t is truly remarkable to judge a 20th Century medico-sociological procedure through the eyes of an Israelite now dead for at least 3,000 years."<sup>47</sup> One is tempted to ask the doctor — are the other precepts of that venerable Israelite also antiquated and obsolete, such as the prohibition of murder, lying, over-reaching of one's neighbor, false testimony, larceny and dishonor of parents? Have these too gone out of style with the 20th Century? Incidentally, the Hippocratic Oath is more than 2,000 years old and the medical profession still swears by it.

No comment is necessary on the doctor's position as set forth in one of his articles.

Physicians to the human race are, in comparison with physicians to dumb brutes, leagues behind in both scientific investigation and the successful practice of artificial insemination. To be sure, *we are trammelled by conventions, moral codes and frailties of human character, which never hinder the stockbreeder.*<sup>48</sup> (Emphasis supplied)

<sup>41</sup>The Register (Denver, Colo.), June 19, 1955, p. 1, col. 7.

<sup>42</sup>Safford, Tell Me Doctor, Ladies Home Journal 45, 47 (May 1955).

<sup>43</sup>Equen, Roach, Brown and Bennet, Medicine and the Law, 157 J. Am. Med. Ass'n 1638, 1639 (April 30, 1955).

<sup>44</sup>*Ibid.*

<sup>45</sup>Schlemer, Artificial Insemination and the Law, 32 Mich. S. B. J. 44, 51 (1953).

<sup>46</sup>Williams and Levitas, Test-Tube Babies, N.Y. Post, March 28, 1955, p. 18, col. 1.

<sup>47</sup>Guttmacher, 11 Human Fertility 1:16 (March 1946) cited in Warner, Artificial Insemination in Cases of Incurable Sterility, Papers Delivered Before the Society of Medical Jurisprudence pp. 2, 4 (Feb. 9, 1948).

<sup>48</sup>Guttmacher, The Role of Artificial Insemination in the Treatment of Human Sterility, Bull. of N.Y. Acad. of Med. 576 (1943).

## V. Position of the Churches

### A. The Anglican Position

The Anglican Church notes in AID a deordination of the natural order. The Archbishop of Canterbury, leader of the Anglican Church, has put the matter well:

Adultery is the surrender, outside the bonds of wedlock and in violation of it, either of the sexual organs alone by the use of contraceptives, or of the reproductive organs alone by AID, or, of course, of both, as in normal intercourse. . . . It is a mere fact, whether you like to use the word or not, that by the introduction of semen *ab extra* outside wedlock there is an intrusion into, and a breach of, the natural relations of husband and wife — and that is what adultery means; and the exclusive union set up by marriage between husband and wife is violated — and that is what adultery means.<sup>49</sup>

The Archbishop of Canterbury set up a commission of thirteen experts to study the matter of artificial insemination; their seventy page report is very enlightening although it is not an official church document. The report condemned artificial insemination by donor and approved of it if with the husband's seed. This they permitted even if the husband procured the seed by masturbation.<sup>50</sup>

### B. Position of Other Churches

It might be interesting at this point to note the position of other churches.

The Swedish Church also expressed its disapproval. But in 1953 a government commission from Sweden, as well as similar groups in Denmark and Norway decided that test-tube babies were beneficial to marriages in which the husbands could not pro-

duce children. The Danish group went even further and recommended that selected single women of "high moral standards" be allowed to have "artificial" babies if they so desired.<sup>51</sup>

In the United States, three years ago, the National Council of the two million member Protestant Episcopal Church appointed a committee to study artificial insemination. The report, expected to follow the thinking of the Anglican Church, is to be finished this year. Spokesmen for some of the other major Protestant sects refused to put themselves on record.<sup>52</sup>

Orthodox Jewry, through the Rabbinical Council, called the whole matter "vast" and "new" and said there has not as yet been "an official and formal resolution of the problem." Rabbi Sidney Regner, executive secretary of the Central Conference of American Rabbis said there is neither a ban nor an endorsement of artificial insemination by Reformed Jews.<sup>53</sup>

### C. The Catholic Position

The position of the Catholic Church on this subject is clear and unequivocal for it is based on principles which are evolved from the natural order of society and from the peculiar make-up of man as a social and moral being designed by God with a specific nature suited for specific purposes and destined for a definite end. These principles are eternal and absolute. They are, however, in no way the arbitrary, capricious or subjective impulses of an authoritative group but rather they are patiently derived from the nature of man revealed by intimate

<sup>49</sup>See Davis, S.J., *Artificial Human Fecundation* 5, 13 (1951).

<sup>50</sup>See Bezzant, *Artificial Human Insemination*, *Fortnightly*, 78 (Feb. 1949).

<sup>51</sup>Williams and Levitas, *Test-Tube Babies*, N.Y. Post, April 1, 1955, pp. 4, 24, col. 5.

<sup>52</sup>*Ibid.*

<sup>53</sup>*Ibid.*

study and analysis in the light of reason and revealed truth.

While the technique of artificial insemination is in the field of medicine, its evaluation is more properly in the field of law, ethics and sociology. As Pope Pius XII stated,

The practice of artificial insemination, when it is applied to man, cannot be considered exclusively, nor even principally, from the biological and medical viewpoint while leaving aside the viewpoint of morality and law.<sup>54</sup>

The ultimate rationale for the exclusive nature of marriage, its permanence and its inviolability, is the protection of the child. In the mind of God and according to His good purposes it was established that new life was to issue from the life of those already enjoying life.

It is a characteristic of new life, in its human form, to be completely helpless and at the mercy of those who nurture it. So God implanted in the hearts of parents a natural love of offspring, a powerful instinct to preserve it, cherish it and nourish

<sup>54</sup>Address by Pope Pius XII, Fourth International Congress of Catholic Doctors, Sept. 29, 1949. *Atti del IV Congresso Internazionale dei Medici Cattolici*, o.c., p. 13 (1950).

it so that this new life might achieve maturity and fulfillment. These constitute the natural duties of parents. In this way did the Creator insure the continuity of life under circumstances most conducive to the fulfillment of the reason for its creation. The common experience of mankind and the confirmation found in scientific and social fields conspire to point out that children thrive and reach maximum maturity and fulfillment only in an atmosphere of permanence, warmth and security. This atmosphere is achieved in its highest form only within the confines of the home and under the conditions that civilized society has defined for marriage.

The moral, ethical, sociological and psychological considerations should dissuade the prudent man from the practice or the recommending of AID.

Only the procreation of a new life in accordance with the will and design of the Creator . . . carries with it in a marvelous degree of perfection the fulfillment of the purpose proposed. It is at one and the same time conformed to the corporal and spiritual nature and dignity of the married, and to the normal and happy development of the child.<sup>55</sup>

<sup>55</sup>*Ibid.*