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THE DIGNITY OF HUMAN PROCREATION AND REPRODUCTIVE TECHNOLOGIES: ANTHROPOLOGICAL AND ETHICAL ASPECTS

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Adoption as an alternative to the FIVET. Proceedings Tenth Assembly of the Pontificial Academy for Life. 20-22 February 2004.

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The object of this report is to analyse the legal institution of adoption considering its use as a possible alternative to assisted reproduction techniques. For this we must undoubtedly part from two details that are more or less controversial. One is that both procedures serve the same purpose. In this case it could be described as the attainment of a child by a couple or by a single adult. As is notorious, both cases are *not* identical for everybody nor are they worthy of the same treatment on the part of the Magisterium. In effect, Catholic matrimonial morals and the proposal of natural law that has been secularly sustained by the Church, limits the alternative to adoption by a married couple or assisted reproduction also with respects to a married couple.[1] In this sense, there does not exist a strict relationship between the attitude towards the formula of adoption and that had with respects to FIVET. For example, adoption of a child by a single person may be considered from the perspective of the interests of the child or pondering the need at a given moment of having adopters and the situation of urgency that we are facing. We are dealing with prudential criterion that impinges on a reality that we cannot disregard. Adoption is not true reproduction, which Fivet is. Consequently, to the latter is applicable all Christian anthropological construction on reproduction, in the strictest sense. As we will see, this will affect the case of the adoption of already fertilized embryos.[2] They are not adoptions but rather FIVET, and they do not imply making the child theirs legally, but also naturally. Other cases imply diverse factors that are modifying for different reasons moral opinion on this issue.[3] To put an example, the Church may accept the licit nature of an adoption by a single person, although without a doubt our preference is for adoption by a married couple when this is possible, but hardly can the same be done with regards to adoption by a de facto

[1] " Poiche solo il matrimonio assicura un esercizio deila sessualita umana semplicemente umana, un esercizio doe che ne realizza la bonta essenziale, e grave dovere della legge civile difenderlo e promuoverlo contro ogni tentativo di oscurarne 1'iritima bonta e dignita. Cid deve essere fatto, alrneno, matrimonio legittimo", CAFFARRA C, *Etica generate della sessnalita,* Milano: Ares, 1991: 86-87.

[2] CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Donum Vitae,* (22.2.1987), II, a, 2 AAS 1988.

[3] JOHN PAUL II, *Veritatis Splendor,* 1993, n. 48.

,. couple. The other relevant data is that one method, adoption, does not pose the moral problems existing with FIVET and other forms of assisted reproduction. Indeed, those who turn to FIVET from a subjective perspective, or the same technique considered alone, may imply a series of diverse purposes other than merely making theirs a child that is present in the adoption. Amongst these purposes it is possible to highlight, the search for a genetic connection between the parents and the children, the recovery of a deceased loved one through post mortem fertilization, overcoming natural obstacles to unacceptable forms of reproduction, like that of two people of the same gender, or research itself for the subsequent development of therapeutic techniques. For these purposes, very present in FIVET from the beginning, although concealed under the discourse of a "remedy for infertility", adoption would not be an alternative, not due to moral reasons but rather in that it does not offer the solution to a combination of practices that would not only lead to ethical problems with regards to the means or object but also with regards to the purpose. It does seem that adoption would be an alternative to the desire of a married couple of having a child to love and educate.

The question is, thus, to place adoption as an alternative that is morally acceptable in light of Catholic Magisterium. However, we can and we must go further. Indeed, FIVET has had a very negative effect on the totality of legal ordinances, forcing modifications almost of a constitutional nature, evidently by way of a restrictive interpretation of human personality.[4] None of this has occurred with adoption, which, although it sets forth certain problems, substantially the formidable increase in the power of the administrative authorities over the family environment, it has followed an evolution affirming the rights of man, substantially those of the minor, liberating itself to a certain extent from its hereditary past. From this perspective adoption is a legal alternative which, "imitating nature", uses adoption in a dual manner. Firstly, it offers a home, a family, to a child that needs it, on the other, it satisfies the affective needs of a family and allows it to express its altruism by becoming the home for this needy person.

FIVET and adoption, despite their differences, have coincided and been the centre of a controversy that has arisen simultaneously in various countries during the last few years. Diverse representatives with radical ideology have used these two realities as a modifying lever of the judicial order. In Spain, where the debate has been very intense, some public representatives have

[4] RONHEIMER M., *Derecbo a la vida y estado moderno,* Madrid: Rialp, 1998.

been skilful when it comes time to "putting ones finger on the wound". Recently, as a result of the controversy raised due to the possible adoption of minors by homosexual couples, the socialist president of the Autonomous Community of Extremadura indicated that in his Autonomous Community it was understood that it was necessary to find families for children with that need, and not children to people who desired them. This statement, which certainly clearly reflects the concept of the " interests of the minor " in Spanish adoption law, is an interesting starting point to approach the question of adoption as a possible alternative to assisted fertilization.[5]

The controversy outlined introduces us to another question, marginal in appearance, but which, as we are trying to show, has a strong connection.

During the last few years both the FIVET as well as adoption have been used as elements of standardisation. Indeed, more than covering a need that we could denominate as objective, of a response to social problems relating to the fall in the birth rate or the urgency of finding a solution to the problem of defenceless minors, both the FIVET as well as adoption find themselves amongst the elements that determine the alleged discrimination of homosexuals.[6]
Consequently, the claim by same appears as an effort in favour of equality and the suppression of barriers that has had firm political support, as well as support from institutions like the United Nations. This opens a new front where . , the Magisterium once again finds itself compelled to take on the defence of natural law against the process of sentimental arbitrariness that has been imposed as one of the most defining characteristics of our post-modern society.[7]

In this manner the aim is to obtain, in the name of equality, the *legalization* of inequality, subverting the basic institutions of law. Thus, matrimony, institutionally a reality that unites a man and a woman for the sake of forming a family, and that solely for this reason constitutes a reality that is legally protected, is transformed into an a la carte institution that has as its sole objective the standardization of a certain sexual relationships, for an arbitrary term depending on the free will of the spouses. That this is not matrimony is notorious, irrespective of the fact that national and international institutions disregard such an elemental reality. The place where the person is received

[5] CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Considerationes acerca de los proyectos de reconotimiento legal de las union es entre personas homosexuales,* III, 7.

[6] SERRANO RUIZ-CALDERON J.M., *Nuevas cuestiones de bioetica,* Pamplona: Eunsa, 2002, chap ter IV.

[7] *Ibid.,* chapter III: *" Argumentaciones racionales contra el reconotimiento legal de las uniones homosexuales".*

with dignity is in matrimony, foundation of the family. Evidently, it is necessary to describe married couples where the person is not welcomed as it deserves, where the encounter is not affectionate and where the newborn is not received as a gratuitous, but it is not possible to imagine this combination of conditions outside the family. It is especially significant to observe how this gratuitous welcome does not exhaust its importance in the individual, who sees his condition recognized by the parents and the community, but rather transfers his stamp on the place of the welcome, that is the family, which at that moment acquires its true meaning. The paternity/maternity experience, constantly reiterated, open to receiving the gift of life, constitutes a community that overcomes the technological aspect so as to appreciate the donation, love and solidarity.[8]

This perspective of donation requires a donor. This breaks the logic that is merely productive and constitutes man as someone who is not the property of anybody. This perspective allows us to discover the concept of gratuity, which without God lacks all meaning, and allows man, which is this manner receives and is received, to pass on this experience to the rest of the community that surrounds him, and to the world where man, by participating, acquires the status of guardian of love.[9]

If we exclude the circumstances that refer to the FIVET, which is not a direct object of our analysis, we can state that in the recent past adoption and FIVET have followed divergent paths.

Indeed, in principle, adoption was conceived as a method that fundamentally referred to the interests of the adopter, or rather as a legal means by which to cover other objectives pertaining to inheritance or the maintenance of the family name. Moreover, adoption was contemplated with a strong distrust during the whole elaboration process of continental law. Examples of this relative rejection would be the prohibition of adopting if legitimate children existed, in order not to be detrimental to the heirs, and the norms on the difference in age and the minimum age for adoption that delayed same until a clearly mature age, for example, in Italian law until fifty years of age. The minimum differences of age required for the adopter and the adopted is also good evidence of the manner in which the lawmakers contemplated the institution. On this point, we can observe notable mistrust of the reasons for an adoption by a person from the opposite sex, for example.

8 JOHN PAUL II, *Evangelium Vitae,* 1995, n. 2; n. 7. *

9 Ibid., n. 92.

The aim was to avoid an intrusion within the natural family, clearly privileged and in relation with which adoption was contemplated as a kind of interference. Naturally, we must understand that under the denomination of adoption, Roman *adoptio,* very disparate realities have been observed.

In the institutions covered in the Hamurabi code, like the "marutu", which has as its object the assumption of the legal paternity on the part of one person over another, to place the latter in the situation of being able to inherit, we can observe the use of the institution for diverse purposes, including educational.

The legal origin of the majority of our legislation is found in the Roman *adoptio,* which in the definition put forth by Eduardo Volterra is presented as the passing of a free *aliena iuri subiecta* person to the authority of another free person.[10] The method was a triple sale of theson that produced the suppression of the first bond. Subsequently followed the claim of paternal authority by the adopter, to which the former did not oppose. Amongst the purposes of said action was notably the desire not to lose the family name and the maintenance of the cults linked *to* the *domus,* to the *lares* and *penates.* It was reasonable that with the Christianity the institution fell into certain disuse.

Naturally we cannot forget the political practice of adoption as a form of succession that was used during the empire. In *justinianeo* law adoption will appear as a legal business transaction between the parents, to which the adopted child gives its conformity, having previously suppressed the emancipation. It is necessary to remember that this process is linked to the modification of the rigidity of the primitive Roman parental authority, which even during its time surprised because of its harshness.[11]

In intermediate law, *adoptio in hereditatem* prevails. In the absence of carnal children, clearly privileged after the preponderance in Christianity of the natural family, it was possible to create fictitious offspring. The *lex rubiraria* allowed the transmission of assets in the absence of a will by means of three systems. One, the adoption of a hereditary title, two, the transmission *inter vivos* through a series of written procedures, and three, the transmission of the assets by *tradionem et testibus.* Carlomagno imposed public control, requiring the presence of the King, or a count, or before the *missi domini.*

[0] VOLTERJRA E., *Adozione, diritti orientate, greco, romano,* Novissimo Digesto Italiano, Torino: UTET, 1957: 286-288.

[1] SCHLUZ R, *Derecho Romano Cldsico,* Barcelona: Bosch, 1960: 135.

Christian law tended to protect the natural family by means of the institution of legitimacy. This practice, in contrast to the free disposition of the assets, favours the legal adoption by heirs as contrasted with other ordinances.

Indeed, common law ignored adoption in its legal tradition. According to Caroline Bridge, the first territory of the Commonwealth that recognized a form of adoption was New Zealand in 1881.[12] In any case, throughout the industrial revolution illegal adoptions were taking place where wealthier families were taking care of children living under conditions of abandonment. Some of these formulas were extended by medieval institutions, like taking in children as pages or servants. During the hard times of the industrial revolution, these formulas created situations of abuse, reinforced by tendencies to lighten state loads in orphanages by sending the children to rural families, where it was very common for them not to receive moderately acceptable treatment.

In this sense, we can consider that under this law the tendency towards legal adoption may be considered as an effort in the search for the protection of minors, in contrast to other clearly debatable formulas. This line culminates in the Adoption Act of 1926.

Under *civil law* adoption was conceived as a form of imitating ones own filiation. The fundamental objective would be to obtain heirs to the family assets or name by those who would not have been able to obtain same. This factor is fundamental for understanding a series of dispositions common to comparative law aimed at guaranteeing the situation of possible legitimate heirs, present or future. In such a manner is understood the condition of age that required the adopter to be fifty years old, and forty under certain conditions, fundamentally that they could not have children. In this sense, it is possible to find a clear distinction between the equivalent adoption and the more contemporary model. The intention of the former was to protect the rights of the legitimate children, the latter to guarantee equality in the treatment of the children, protecting the adopted child from suffering discrimination.

The legal requirement that the adopter not have legitimate or legitimated descendants is understood in this manner. To that was added the requirement of having a good reputation and, finally, the convenience of the action from the adopted child's perspective, *in.* principle based fundamentally on patrimonial criterion so as to avoid abuse with regards to the minor's assets.

[12] BRIDGE C, SWINDELLS H., *Adoption-The modern law,* Family Law 2003.

The fundamental change in direction arose around the phenomenon of the world wars, with its tremendous consequences, seen in the number of orphans. The Spanish Civil War, slightly before, also marked this trend within Spanish law itself. The phenomenon of abandonment and the interest in attempting to find a family for minors in this situation has decisively modified this institution. The reigning concept in an adoption, and the intermediate formula that has arisen, all evolve around the interests of the minor. In contrast to the previous law, this concept pushes in the direction of the elimination of all distinctions between natural and adoptive filiation, which to a certain extent contributes to the subsequent abandonment of the distinction in the filiation between the so-called legitimate children, today matrimonial, and the illegitimate or natural children.

To this process has contributed the growing power of the state and their concern for the situation of minors within conflicting family environments. Legislation has limited the classic paternal authority, which passes to be interpreted in view of the situation of the children rather than as the rights of the parent. The effect has been a growing intervention of the judicial authority and, what is more debatable, that of social workers, resulting in a good number of minors being declared defenceless. To this it is necessary to add another phenomenon that could be considered paradoxical, which is, the observation of the psychological inadequacy of the state or social institutions, for example the orphanages, to cover the needs for the correct upbringing of the children. The paradox lies in that the growing state intervention takes place within a context in which it is recognized that children need a family atmosphere for their correct upbringing. Thus, adoption appears as a fundamental solution to a problem that contemporary society suffers with force.

It would be ingenuous to believe that this data completely defines adoption. Indeed, the developed countries present characteristics that explain the new pre-eminence of adoption and also, by the way, of the desperate resource of FIVET, in a good number of cases. We could cite the following. The delay in the age of matrimony in countries like Spain, *to* the age of thirty, means that women enter marriage with their fertile age very advanced, to this it is necessary to add the continuous use of birth-control methods with effects on the fertility of women and the decrease suffered by masculine fertility as a result of problems linked to lifestyle, and others of an unknown origin. The effect is a growing number of couples with fertility problems, of which some turn to assisted fertilization methods but many others turn to adoption. Due to the shortage in the number of non conflic-

tive children In their early years ages that can be adopted in the developed countries, a new phenomenon has arisen, international adoption.[13] It is necessary to highlight that this phenomenon is grievous and difficult for the adopters, and shows their enormous will in trying to constitute a family with descendants. Evidently, the fact that many of the adopters already have their own children likewise proves an altruistic attitude and solidarity, fact that evidently cannot be obviated.[14]

According to Aristotelian tradition, this desire, correctly channelled, is clearly virtuous. Indeed, the satisfaction in the virtue, raising a child, reinforces the kindness of the act. However, it is important not to forget that this desire is not always legitimate in the methods used. Indeed, in adoption abuses of this type can be observed. For example, in some forms of international adoption. In the FIVET the statement of the alleged right to a child has directly led to abuses against human dignity.

The desire to have a child combines in this case with the interests of the minor, whom, usually in developing countries, find themselves in a situation of abandonment. It is necessary to highlight that the law, both nationally as well as internationally, has had to make an effort to provide guarantees so as to avoid inevitable abuses that could arise in these adoptions. International adoption law has benefited from the protective current of minor's rights that appears included under the concept "the superior interest of the child", in Spanish legislation pertaining to the interests of the minors.

Thus, the Declaration of Children's Rights of 1959 declares that: "The child will enjoy special protection and will have opportunities and services, all this set forth by the law and through other means, so that the child can develop physically, mentally, morally, spiritually and socially in a healthy and normal manner, as well as in conditions of freedom and dignity. Upon promulgating laws with this purpose, the fundamental consideration to be adhered to will be the superior interest of the child ".

Along these lines, the Convention of the Hague relative to the protection of minors and international cooperation relative to the protection of minors and cooperation in the field of international adoption intends " to establish guarantees so that international adoptions take place in consideration of the superior interest of the child and respect of the fundamental rights that are recognized to children pursuant to international law".

[15] LAZARO L, *Los menores en el derecho espafwl,* Madrid: Tecnos, 2002: 4l6ff

[14] BRIDGE, SWINDELLS, *Adoption the modem law...,* pp. 289-354.

Within the regional European environment we can observe the same tendency, which will have, evidently, effects in the field of adoption. Together with the Agreements within the core of the European Council, we can detain ourselves on the Charter of Fundamental Rights of the European Union, which, in article 24, states that: Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters that concern them in accordance with their age and maturity

In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his/her parents, unless that is contrary *to* his/her interests ".

The most contemporary adoption is governed by the concept of the interests of the minor.[15] This substitutes other considerations like lightening the state loads in relation with orphanages, which to a certain extent initiates the process, or the interests of the legitimate children to the inheritance. I almost dare to affirm that the loss of relevance of the inheritance itself in the strongly socialized systems that we find throughout a good part of the world also contributes to the tendency outlined.

It has been said that the concept of the interests of the minor is a concept that is legally vague. This is true but it is also true that it remits to a combination of social valuations that are outlined in legislation and jurisprudence. The conditions that in general are required in practice are truly revealing of another contemporary phenomenon. As the crisis relative to the legal treatment of the family, more than the family in itself, worsens, the ideal description reinforces the role of the family in the strictest sense, which is the one that, apart from ideology, is required in adoptions, in that it is understood that it favours the interests of the minor. As a vague juridical concept, the superior interest of the minor, it is necessary to distinguish three ambits, one of positive certainty, or non debatable elements, another of negative certainty, or clearly excluded situations, and an "intermediate area", of variation or uncertainty, where there is room for several options within the margins of valuation.

In English law, the commission that prepared the Children Act of 1989 included some of the criterion that could be used in this determination. These

[15] RIVERO HERNANDEZ E, *El interés del menor,* Madrid: Dykinson 2000; LAZARO GALDIANO, *Los menores en el derecbo...,* pp. 98-121.

would be: " The wishes and feelings of the child, considered in view of their age and discernment, their physical, educational and emotional needs, the probable effects of any change in their situation, their age, sexual atmosphere and any other characteristic of the child that the court may consider relevant, any harm suffered or risk of suffering it, capacity of each of the parents, or the person being considered to satisfy the needs of the minor and, finally, the range of powers at the disposal of the tribunal ",[16]

This pre-eminence of the interests of the minor explains likewise the line of argument with regards to adoption by homosexual couples. From the perspective of homosexual activism, and the radicals that support it, the question is put forth as a problem that evolves around the so-called right to a child. The idea, evidently, is not to carry out acts that may produce a child, but that they be handed over a child that to a certain extent reinforces the " normality" of their love.

The opposing argument has not been centred on the naturalness of the family in the strictest sense, or on the irreplaceable elements of the institution of marriage, but rather on the affective and psychological needs of the minors and the inconveniences for them of being raised in an environment with such special roles, as occurs with a homosexual couple. It is very significant that in the debate in Spain there were continuous appeals to call on the psychologists, ;… whom would constitute here a kind of a new technocracy, or what Maclntyre has denominated the dominance of therapists.[17] This evidently proves that even the scientific reference in the determination of the interests of the minor, for example parting from psychology, must part from an axiological option.

For some radicals this would lead to total arbitrariness in the determination of the interests of the minor, which in reality it cedes, although not nominally, faced with the interests of the strong spirit, to use the sadistic expression, present in adoption for example on the part of a couple of the same gender. This position is reinforced in the scientific crisis when doubts are cast on the objectivity of the therapist, similar *to* what we have observed has happened in cultured morality and in its concept of naturalness.

On the other hand, for those who interpret that reality, that is, the truth, outlines an axiological structure, marked, for example, by the concept of *telos,* this determination of the interests of the minor is possible in a different form to the one that we could denominate dominant although in crisis.

[16] *Ibid.,* p. 65.
[17] MACINTYRE A., *After virtue,* Barcelona: Crítica, 1987: 48-49.

It is possible to determine the interests of the minor in view of the *telos* of the human individual, and in connection with the socially relevant values. It is possible in connection with the natural rights of the families, with the definition itself of same, with the validity of the subsidiariness in the opera tion of the social and political institutions, with the interpretation of what education is, and so forth for a long etc. Naturally, this vision can darken at certain moments, as occurs at present in the majority of our societies, but it is not very difficult to prove that this is due " to the false prudence of wise and to the abuse by the powerful".

Artificial fertilization has, seemingly, a much less complex history. Stem ming from veterinary science, its objective in humans seems to be directly related to overcoming problems of infertility. The purpose is to obtain a child, preferably a descendant of the person turning to fertilization. Louise Brown was born in England, fruit of the efforts of the doctors Patrick Steptoe, gine cologist from Oldham General Hospital and Robert Edwards, physiologist from Cambridge University. Her parents had attempted for many years to have a child, but an obstruction in Fallopian tube of the mother prevented this.

The technique applied for such a surprising process, that reminded many of the foresight of the work of Aldous Huxley " Brave new world ", was being developed since 1966, but had always failed a few weeks after the embryo was transferred to the mother.

From 1978 onwards the technique improved its limited success, and was extended to many countries, constituting a hope of having children for women with impediments of diverse types. Although from a demographic point of view the phenomenon of in vitro fertilisation with the transfer of embryos (FIVET) has had a scarce impact - some hundreds of thousands of births during the first twenty years -, with regards to legislation, especially in family law, and the human embryo statute, the effect has been very notable. In this manner, the presence of sperm or ovule donors has meant that assisted fertilization has had an impact on questions such as the recognition of the children in couples, investigation into paternity, prohibited in this context in Spanish legislation, constituting an exception to the general rule, or even to the obviousness that the child belongs to the mother that gives birth. (Although under Spanish law this rule has been maintained to avoid substi- tute or surrogate mothers).

Very soon the technique had its detractors, as well as staunch partisans. Among the first we could highlight Jacques Testart himself, technical creator of the first French test tube baby. The warnings with regards to the FIVET

have been divided into two categories. The first makes reference to the possible effects of the deviations of the technique with respects to the first proposed objective, to overcome diverse forms of infertility. Thus, denounced was the appearance of diverse forms of surrogate mothers, with gestation by commission, admitted under some laws but clearly rejected under continental legislation. Likewise the procreation of children for diverse reasons other than for their own existence, as siblings created to act as donors for some already existing brother. Moreover, an announcement was made with respects to attempts to overcome menopause with the famous mother grandmothers, there was discussion on the possibility of creating children for homosexual couples with diverse combinations, the application of a massive eugenics, or even the possible creation of human-animal hybrids. It was considered that the biggest step would come with human cloning, in principle rejected with big declarations, but then admitted by some under the so-called "therapeutic " cloning, more exactly known as research cloning.

Other doubts on the FIVET were centred on more nuclear aspects of the phenomenon. They explain, to a good extent, the desertion of Testart from the practice and the criticism that the technique suffered very soon by very relevant authors like Jerome Lejeune.[18] The impression that in vitro fertilisation implied an advancement with respects to other techniques of assisted fertilization, and the transfer of human procreation to the laboratory, detaching it to a certain extent from its personal aspect: procreation of a person by other parties within a framework of profound commitment and meaning, in such a manner that it became a technical act that seemed to many to be unworthy.

The position of Pontifical Magisterium was very clear on this aspect, but it is convenient to recall that it was not only one: although to a certain extent it was pioneer,[19] soon it was accompanied by prestigious bioethics like Leon Kass himself, of Jewish confession.[20]

Certain bioethical thought has wanted to present these doubts as characteristic of an almost superstitious naturalism. To a certain extent it is said that technical intervention is in itself human, and that the final objective sought was good: to overcome the inconveniences of sterility. Moreover, it has been argued that the child fruit of in vitro fertilization is the most sought after

[18] LEJEUNE J., *L'enceinte concentmtionaire*, Paris: Fayard, 1990.
[19] CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Donum Vitae*, II, B, 4, b) AAS 1988.
[20] KASS L.R., *Life, liberty and the defense of dignity. The challenge for bioethics*, San Francisco: Encounter Books, 2002: 85.

child, with very profound personal and economic costs for the parents, and even detached from sexual impulse. There are no accidents in in vitro fertilization, it is argued: all the children fruit of same are wanted, with the importance that this concept of " desired child " has, after the generalization of deliberate abortions.
Sufficient time has elapsed so as to carry out a balanced examination of this criticism based on experience.

One of the most profound bioethical concerns is the risk that technology entails for human beings themselves, given that the human being has gone from being the subject of all scientific action to being the object of same: from manipulator of nature to object of its own manipulation, in a manner that was unthinkable before the scientific revolution.

The relevance of the technical nature of human procreation resides, firstly, in the substitution of the concept of procreation itself by that of production, even if it is with a beneficent objective, however, it has a second link in its impact on the phenomenon of freedom. It is the main supporter of novelty. Thus, the tendency to control it is a vain effort of dominating the future or, if one wants, of manipulating the human of the future. Allied with positive genetic manipulation, that is, with the predetermination of personal qualities, chosen externally, it is a threat to real change, for the sake of an absurd effort *to* control.

It is true, however, that from the beginning artificial fertilization has shown a tendency to stray from this line that we are describing, through the inclusion in practice of donors outside the realms of a couple, or being directly situated outside a matrimonial environment, with the fertilization of single women, or finally, becoming the means used to totally avoid the naturalness of procreation through substitute maternity, in the politically more correct expression, more exactly denominated surrogate mothers or hiring of uteruses. Legislation like the Spanish has prohibited this last modality, but there is certain pressure for its legalization. The reason for the latter is the same reason underlying, for example, arguments to extend the premises for the selection of gender, the clinics intention of enlarging the market. This economic aspect of the FIVET has been constantly obviated, a very clear example of the ideologization of the problem. Thus, the whole discussion on the FIVET enters into rhetoric of good intentions that is at the least suspicious. The FIVET is not a very effective technique, clearly in regression in veterinary science, for example, that has followed in its legislative translation an exact opposed direction to that of adoption. If adoption evolves from a pat-

rimonial conception to the hegemony of the interests of the minor, in the legislation on assisted reproduction nothing similar exists. Moreover, in a similar manner to how the new legislation on adoption has required a modification of the most classical conception of paternal authority, with a tendency to change authority with responsibility, the FIVET has required a change in the consideration of the human being in the prenatal phase, going from the almost total non-protection of what under Spanish legislation is denominated pre-embryo to the point of the selection of the re-implant or abortion to protect the level of the quality of the result of the action.

In the FIVET, together with the greater issue for us of the unworthy separation of a loving union and reproduction, we observe other tendencies. The first is the severing of the FIVET from its alleged therapeutic objective. Indeed, with great clarity from the beginning in Anglo-Saxon law, and with growing incidence in continental law, although the rhetorical claim is to overcome forms of infertility, this symptom is. not a requirement, for turning to these techniques. Moreover, there exists a reasonable doubt, which goes beyond that expressed by Testart in his book "the transparent embryo", that the intention of providing children to couples that need them, is the underlying main tendency of the FIVET, given that under this excuse the FIVET has allowed research on human embryos to reach levels that would have been unreachable without this ideological alibi. The action taken both in budgetary terms as well as in the modification of legislation or in international Declarations seems excessive when faced with the 1600 children a year that are born in Spain, for example, with these techniques.

On the other hand, if the FIVET is physically grievous for whoever consents to use same, it is not greater than international adoption in budgetary terms. It is convenient to remember that faced with the shortage of adoptable children in developed countries, this formula is the most used. But, moreover, the complex analysis to which whomever wishes to adopt is subjected to, with regards to the suitability of their customs, their reasons for adoption, their past life, the couple's stability, equality regarding other children etc., does not take place with those who consent to the FIVET. In the strictest sense, we would be talking of a therapy with no control of the symptoms, in which prevails the interest manifested by whomever wants to turn to the FIVET, without any other consideration. Certainly, the interest of the *nasciturus* hardly appears. This explains the difficulties of limiting the FIVET when, for example, I have knowledge of the so-called mother-grandmothers, that is, whom have surpassed the age of menopause, or of the conflicts with post-morterm

fertilization, which still prohibited under various legislation, reappear periodically at least as a vindication. It is contradictory to the interests of the minor to be born an orphan *exprofeso,* or of an unknown father *exprofeso,* or of a biologically unknown mother *exprofeso,* or of an old mother in identical form, but this argument doesn't especially impact the FIVET since its own logic is diverse.

This is why it is possible to conclude that the FIVET cannot be repaired or has no manner of renewing itself into an ethically and legally acceptable practice. It is not about perfectioning the technique so as to limit its high rate of abortion, or of regulating it to avoid its most prominent edges, the FIVET is in itself reprehensible.

This is the opposite to adoption, based on the interests of the minor, and although as all human institutions it is susceptible of suffering reprehensible deviations, adoption is an act of altruism that should be fomented in that "it solves the need of a born minor and it allows a married couple to receive the gift of being able to offer their love, be it because of the impossibility of having children by another morally acceptable method, or because of a well intended act of solidarity with children deprived of a family.

We could say that faced with this biological fact and the law, both institutions follow a diametrically opposed path. That is why it is very unjust for those of us opposed to the FIVET to be labelled biologists. Indeed, adoption overcomes a biological difficulty, for example, sterility, using the law to make a child legal, where the affection establishes the paternal-maternal relationship, without any biological relationship. The children are not biologically their children, but the law and the refuge given makes them theirs in the strictest sense, in such a manner that it makes up any difference with the biological child. In the FIVET the difficulty is overcome by means of a technical intervention that substitutes the encounter of two people's love, such that the biological aspect, substituted the matrimonial encounter, is the most relevant. This claim is very clear when attempting to overcome essential biological difficulties, as it is to obtain a child from a dead person, or to obtain a biological child from people of the same gender by means of some form of cloning.