

# ARTICLE: THE CRISIS OVER THE INSTITUTION OF MARRIAGE AND CONTEMPORARY BIOETHICS

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## Reporter

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## Text

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### Introduction

The crisis over the institution of marriage is reflected in the social reality that very many people have lost a sense that "marriage" names a fundamentally unrevisable normative pattern proper to the sexual relationship between a man and a woman. The name "marriage" is nowadays increasingly appropriated to refer to same-sex relationships, a development which has already been given statutory recognition by a number of legislatures. Since marriage is the foundation of the family, as traditionally understood, a loss of a sense of the normative claims of marriage has brought with it a loss of a sense of what is proper to the family, with dire consequences for the well-being of children.

Cardinal Alfonso Lopez Trujillo's article is in part an apologetic aimed at assisting people to recover a sense of marriage as a natural institution characterized by a normative pattern for the man-woman sexual relationship, and in part a diagnosis of the roots of the loss of a sense of this normativity, which has been replaced by the belief that marriage is a radically mutable social construct. <sup>1</sup>

In what follows I shall first seek to pinpoint the salient features of Cardinal Trujillo's apologetic for the thesis that marriage is a natural institution; and I shall offer some commentary on the direction of his apologetic. Then, turning to his diagnosis of the roots of the contemporary subversion of marriage, I shall identify certain ideas re-ced>ues of bioethical discourse, standardly invoked to justify developments in biomedicine subversive of marriage, and which reflect an outlook with many contemporary advocates. The social [\*548] subversion of marriage is best understood by reference to this outlook. Finally, I shall try to state what the focus of our response to this situation should be.

### I. Marriage as a Natural Institution

#### A. Cardinal Trujillo's Case for the Thesis

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<sup>1</sup> See generally Alfonso Cardinal Lopez Trujillo, The Nature of Marriage and Its Various Aspects, [4 Ave Maria L. Rev. 297 \(2006\)](#).

Cardinal Trujillo's case for regarding marriage as a natural institution is based on the claim that, in being the distinctive kind of relationship it is, marriage answers to two fundamental sets of needs characteristic of the nature of the human condition:

- (i) the needs of men and women for fulfillment through self-giving in a relationship which honors their dignity; and
- (ii) the needs of the child in his/her begetting, gestation, and rearing.<sup>2</sup>

Precisely in meeting needs fundamental to the nature of the human condition, marriage belongs to the created order.

The Cardinal explains the first set of needs by reference to a central thesis of the theological anthropology of *Gaudium et Spes*: that it is in the nature of man that he "cannot fully find himself except through a sincere gift of himself."<sup>3</sup> Marriage meets this need because it is a covenant "whereby spouses mutually bestow and accept each other."<sup>4</sup> The giving and the receiving being unreserved (implying exclusivity and fidelity in the sexual relationship) are conditions of a non-instrumentalizing and non-exploitative relationship between the spouses and so conditions for each spouse honoring the dignity of the other. Unreserved self-giving in sexual intercourse is a necessary condition of the "intimacy" that is proper to marriage, namely the "intimacy" of being "one body." Authentic bodily self-giving in marriage is rooted in a disposition of the will to love the good of the other. Mutual self-giving, so based, constitutes marital friendship (for friendship requires that each love the good of the other as his or her own good). Marital friendship, authentically lived, meets the [\*549] fundamental human need for a person fully to find him or herself "through a sincere gift of [ ]self."<sup>5</sup>

Precisely in its character of unreserved self-giving, marriage also meets the basic need of a child in his or her begetting, gestation, and rearing. For unreserved self-giving in sexual intercourse necessarily includes the gift of one's fertility, so that it is evident that the relationship is ordered to the good of the child. "By their very nature, the institution of matrimony itself and conjugal love are ordained for the procreation and education of children ... ." <sup>6</sup> A relationship of unreserved self-giving is perfectly adapted to the good of the child, for it establishes a relational context for receiving the child as a gift equal in dignity to the couple themselves and so to be accepted unreservedly as the fruit of their self-giving, and cared for in ways consistent with the child's dignity.

## B. Grounding the Thesis in the Good of the Child

In seeking to make intelligible the notion that marriage is a "natural institution," the Cardinal appears to give no priority to one kind of need over the other - either the spouses' need for fulfillment in self-giving or the child's need for acceptance and treatment consistent with his or her dignity. This is puzzling. The human need for fulfillment through self-giving hardly points to the natural moral necessity of the institution of marriage. To say that it does would be to imply that self-giving in human relationships is not realizable outside the context of marriage.

There is a case for saying that in the current state of cultural confusion, retrieval of the idea of marriage as a "natural institution" has to begin with the needs of the child. Why? Because whatever elasticity there may be in the use of the word "marriage," it is taken to refer to some kind of sexual relationship. So the question arises: Why

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<sup>2</sup> See *id.* at 304.

<sup>3</sup> See *id.* (citing Second Vatican Council, *Gaudium et Spes* [Pastoral Constitution on the Church in the Modern World] P 24 (1965), reprinted in *The Sixteen Documents of Vatican II* 513, 536 (Nat'l Catholic Welfare Conference trans., St. Paul ed. 1967) [hereinafter *Gaudium et Spes*]). See generally Pascal Ide, *Une Théologie Du Don: Les Occurrences de Gaudium et Spes*, n. 24, §3 chez Jean-Paul II (pts. 1 & 2), 17 *Anthropotes* 149, 313 (2001) (providing a documentation of the central role of this thesis in the theological anthropology and theology of marriage of Pope John Paul II).

<sup>4</sup> *Gaudium et Spes*, *supra* note 3, P 48.

<sup>5</sup> *Id.* P 24.

<sup>6</sup> *Id.* P 48.

dignify a sexual relationship with the name "marriage"? As Elizabeth Anscombe remarked more than thirty years ago: "To marry is not to enter into a pact of mutual complicity in no matter what sexual activity upon one another's bodies. (Why on earth should a ceremony like that of a wedding be needed or relevant if that's what's in question?)"

<sup>7</sup> So what is it about sex that requires marriage and what in marriage does sex require? What requires the particular kind **[\*550]** of commitment that is appropriately called "marriage" is the central role that sex plays in human life, namely the role of reproducing our kind. Because sexual organs are reproductive organs, how we conduct ourselves in the matter of sex shapes our relationship to the central human good of offspring, which our sexual powers exist to realize.

If one acknowledges this, one can begin to recognize that it belongs to the nature of the human condition that sexual relationships must exhibit certain characteristics if human beings are to be well-disposed to the good of children. It is an adequate understanding of the good of children which makes clear why it is a natural moral necessity that sexual relationships should have a certain form - the form that is appropriately called "marriage."

What truths about children are most important in determining what is conducive to their good in their conception, gestation, and rearing? Two truths: the first, that each human soul is a direct creation of God, and parents are therefore collaborators with God in the begetting of a child; the second, that every child has the same God-given destiny as his or her parents. In being created and called to eternal bliss, each child is an irreplaceable being in God's providence and, as such, is equal in connatural dignity to his or her parents. <sup>8</sup> Given these general truths about any child, every child's entry into the world needs to be into a generative relationship in which the child is accepted as an irreplaceable gift equal in dignity to his or her parents.

It is incompatible with this understanding of the dignity of the child that he or she should be generated in a manner analogous to a product, as happens in those reproductive technologies which work in the form of mastery over biological materials. The human origin of a child should be sexual intercourse expressive of an unreserved self-giving love on the part of a man and a woman who are committed to treating each other as irreplaceable (i.e., their sexual relationship is exclusive and permanent). For the character of such a sexual relationship disposes the spouses to unreserved acceptance of the child as the fruit of their relationship, an unreserved acceptance which alone is appropriate to the dignity of the child; one might **[\*551]** almost say that the acceptance is "built into" the character of their intercourse insofar as it is expressive of unreserved self-giving, for such self-giving erects no impediments to the spouses' fertility.

Unreserved acceptance of a child entails open-ended commitment to the good of that child for love of the person he or she is. The joint commitment of parents to a child needs to be unbroken, for voluntary abandonment of commitment is deeply undermining to the child. The "moral ecology" which fosters love of the child's good is the moral ecology provided by parents committed to an exclusive sexual relationship in which each seeks the good of the other and in which each is accepted for the person he or she is.

Unreserved self-giving in a sexual relationship between a man and a woman poses no impediments to their fertility. That sexual intercourse should be of the generative kind is a fundamental necessary condition of people being well-disposed to the good of children, for it is a condition of people recognizing that sexual activity should be confined to and appropriate to the relationship that is conducive to the good of children - the one that is appropriately called "marriage." If it is thought that there are good reasons for engaging in sexual activity which deliberately excludes its generative significance, there are hardly grounds for confining sexual activity to marriage. Without a reason for seeing the morally inseparable connection between sexual activity and marriage, people will not be open to the gift of children for the persons they are precisely in and through their sexual activity.

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<sup>7</sup> G. E. M. Anscombe, *Contraception and Chastity*, 7 *The Human World* 9, 23-24 (1972).

<sup>8</sup> For a fuller explanation of the notion of "connatural dignity," see Luke Gormally, *Pope John Paul II's Teaching on Human Dignity and Its Implications for Bioethics*, in *John Paul II's Contribution to Catholic Bioethics* 7, 7-10 (Christopher Tollefsen ed., 2004) [hereinafter Gormally, *Teaching on Human Dignity*]. See also Luke Gormally, *Human Dignity: The Christian View and the Secularist View*, in *The Culture of Life: Foundations and Dimensions* 52, 54-57 (2002).

We may conclude, then, that reflection on the good of the child points to the moral necessity, for securing that good, that:

- . sexual activity should be of the generative kind,
- . confined to a relationship between a man and a woman who are committed to treating each other as irreplaceable in a permanent and sexually exclusive relationship,
- . in which each loves the good of the other and accepts the other for the person he or she is, and
- . in which sexual intercourse is expressive of the unreserved self-giving love each has for the other.

A moral necessity that sexual relationships should have a particular form - marriage - in order to secure a good which is fundamental to human life (the good of children) points to the natural character of marriage as an institution that belongs to the created order.

It should be evident that the relationship that has been identified as needed for the good of children is a kind of relationship that makes [\*552] for the fulfillment and happiness of the man and woman joined in marriage. For a self-giving love which seeks the good of the other makes it possible that each finds him or herself in the manner *Gaudium et Spes* anticipates. Marital friendship is essential to the true character of marriage. To begin from the good of the child in seeking to make intelligible the claim that marriage is a "natural institution" does not imply that one is failing to recognize that marriage is a complex human good, of which the good of the couple as well as the good of the child is an integral part.<sup>9</sup>

## II. Bioethics and the Contemporary Subversion of Marriage

"Bioethics" names a loosely related congeries of disciplines interested in the norms governing clinical practice and biomedical research. The disciplines include philosophical ethics, moral theology, the law, and sociology. More or less sophisticated variations on a limited number of basic positions can be found in the literature of bioethics. In the present article it would be unprofitable to scrupulously attend to the differences between one contributor to bioethical debate and another. This article seeks to characterize in rather broad terms positions which are culturally influential. What is culturally influential, however, is often a vulgarized form of thinking which has its roots in the reflections of innovatory thinkers who have decisively shaped salient features of contemporary culture. Accordingly, some space will be devoted to characterizing elements in the thinking of two key background figures who have served to shape salient features of the thinking which has so readily accommodated developments in clinical practice and biomedical research inimical to the truth about marriage.

### A. The Genealogy of "Individualism"

Cardinal Trujillo sees individualism and an individualist anthropology (promoted, he believes, by legal positivism) at the root of the subversion of marriage. Individualism derives from what he appropriately calls an "anthropologically unhinged vision of the human subject."<sup>10</sup> In this view, the Cardinal joins Pope John Paul II in [\*553] his analysis of the roots of the contemporary detachment of "human freedom from its essential and constitutive relationship to truth."<sup>11</sup>

The principal cause of this detachment identified by John Paul II is of particular importance in understanding contemporary bioethics. It is the absolutizing of human freedom. And one cause of that is the failure to understand

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<sup>9</sup> For a fuller statement of the line of thought sketched in the foregoing paragraphs, see Luke Gormally, *Marriage and the Prophylactic Use of Condoms*, 5 *The Nat'l Cath. Bioethics Q.* 735, 737-41 (2005).

<sup>10</sup> Trujillo, *supra* note 1, at 335.

<sup>11</sup> Pope John Paul II, *Veritatis Splendor* [Encyclical Letter Regarding Certain Fundamental Questions of the Church's Moral Teaching] P 4 (St. Paul ed. 1993) [hereinafter *Veritatis Splendor*].

the relationship between the exercise of freedom and human bodily nature. In *Veritatis Splendor*, John Paul II speaks of

Some present-day cultural tendencies have given rise to several currents of thought in ethics which center upon an alleged conflict between freedom and law. These doctrines would grant to individuals or social groups the right to determine what is good or evil. Human freedom would thus be able to "create values" and would enjoy a primacy over truth, to the point that truth itself would be considered a creation of freedom. Freedom would thus lay claim to a moral autonomy which would actually amount to an absolute sovereignty.<sup>12</sup>

This absolutizing of freedom is explained by reference to the radical modern failure to understand the essential relationship between the exercise of human freedom and human bodily nature.<sup>13</sup>

This failure goes back to the beginning of the modern era and is displayed with characteristic clarity in the thought of Rene Descartes. The influence of Descartes was decisive in replacing a teleological understanding with a mechanistic understanding of the human body. To understand the human body by analogy to a machine is to say that we can explain the kind of thing it is exclusively by reference to the natural laws that govern the parts of the thing, considered not as parts but as entities with independent natures of their own. The art of making machines is the art of putting parts together in ways that take advantage of the natural laws that govern those parts. Mechanism involves a reductionist approach to explanation, i.e., explanation in terms of the laws governing the basic constituents of an entity.

This mechanistic understanding of the human body is clearly on display in the following text from his Sixth Meditation in which Descartes compares it to a clock:

**[\*554]**

Now a clock built out of wheels and weights, obeys all the laws of "nature" no less exactly when it is ill-made and does not show the right time, than when it satisfies its maker's wishes in every respect... .

Of course, if I consider my preconceived idea of the use of a clock, I may say that when it does not show the right time it is departing from its "nature." Similarly, if I consider the machine of the human body in relation to its normal operations, I may think it goes astray from its "nature" if its throat is dry at a time when drink does not help to sustain it. But I see well enough that this sense of "nature" is very different from the other. In this sense, "nature" is a term depending on my own way of thinking (a cogitatione mea), on my comparison of a sick man, or an ill-made clock, to a conception of a healthy man and a well-made clock; it is something extrinsic to the object it is ascribed to.<sup>14</sup>

A clock, Descartes observes, does not function well in virtue of a nature intrinsic to it. The parts of a clock, whether it is functioning well or badly, are true to their nature. Our idea of a good clock is something extrinsic to the nature of the matter which we have combined in a particular way to do the job we want done.

According to Descartes, we can say something exactly parallel about our idea of a "good" (or healthy) body. To say a body is unhealthy is not to say that it is failing to be or to function in a way in which its intrinsic nature would tend to make it function. Our ideas of healthy functioning and unhealthy functioning derive not from any understanding of how the body in its very nature is meant to function, for precisely as a body it has no nature that characterizes it as a unified body. It is a mechanical assemblage of parts, which at the micro-level may be said to have a nature characterized in terms of fundamental laws of nature.

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<sup>12</sup> Id. P 35.

<sup>13</sup> Id. PP 46-50.

<sup>14</sup> Rene Descartes, *Meditations on First Philosophy*, in *Descartes: Philosophical Writings* 59, 120 (Elizabeth Anscombe & Peter Thomas Geach eds. & trans., 1954).

What Descartes rejects here, in what has been his profoundly influential understanding of the human body, is both the traditional teaching about the rational soul as the unique substantial form of human bodily life and the teleological understanding of this life. What he replaces them with is a body, to be explained in mechanistic terms, which is conjoined to a separate substance, the soul, which is the locus of consciousness. Naturalism and materialism have subsequently dispensed with the idea of the soul, and consciousness [\*555] is construed as a mysteriously emergent property of brain development.

Descartes would not have denied that machines and artifacts are apt to serve the human purposes for which they were designed, and in that sense, "have" those purposes. But artifacts and machines "have" those purposes in virtue of the fact that we have so arranged matter to secure those purposes; there is nothing intrinsic to the matter of which the artifacts are composed that would make of our human purposes ends intrinsic to the matter.

To say that the human body is informed by the human rational soul is to say that we possess a single nature - that of a rational animal. And what are given with this nature are ends intrinsic to it, the realizing of which constitutes the fulfillment of our nature. That those ends are constitutive for our fulfillment as human beings is manifested in our fundamental natural tendencies - bodily tendencies (because the body belongs to the unity of the person and shares in the dignity of the person) as well as intellectual tendencies. Our conscious human purposes need to be pursued in ways consistent with our natural ends if we are to flourish as human beings.<sup>15</sup> The complex human good of marriage, which we have been discussing, can be identified as the end of that fundamental human tendency to the mating of male and female and the bringing up of children.<sup>16</sup> If, however, one rejects the idea that the body belongs to the unity of the human person and understands it, like a machine, in terms of its most basic components, then bodily tendencies cease to provide any basis for identifying goods of the person. Since a mechanism is not characterized in terms of intrinsic teleological tendencies that belong to it as a unified whole, the body is no longer thought of as having a nature with natural ends that are constitutive ingredients of human flourishing. The modern mechanistic anthropology, which was given its initial influential expression by figures such as Descartes, has profound consequences for the understanding of human life and of morality. [\*556] First, a mechanistic anthropology represents the essential intellectual move to regarding the body as manipulable material, and no longer a locus of intrinsic value. Modern projects of genetic enhancement, embryo experimentation, cloning, and so-called sex-change operations, as well as the practice of abortion, tend to assume, either tacitly or explicitly, a dualism of person and body and a mechanistic understanding of the body as a manipulable object.

Second, a mechanistic understanding of the body seems to be a crucial background influence on the Kantian understanding of autonomy as the essence of human dignity. Immanuel Kant is the unwitting ancestor of the contemporary understanding of autonomy which accommodates moral subjectivism.

Following a long tradition, Kant thought of self-governance as belonging to the essence of human dignity.<sup>17</sup> So did St. Thomas Aquinas,<sup>18</sup> but he understood self-governance as properly realized through our knowledge of the natural law, understood as our participation in the divine law, manifested in "a natural inclination to [our] proper act and end."<sup>19</sup> So it is a particular kind of knowledge of human nature which grounds for St. Thomas Aquinas both natural moral obligation and its content.

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<sup>15</sup> On the importance and significance of the distinction between ends and purposes, see Francis Slade, *Ends and Purposes, in Final Causality in Nature and Human Affairs* 83 (Richard F. Hasting ed., 1997); Francis Slade, *On the Ontological Priority of Ends and Its Relevance to the Narrative Arts, in Beauty, Art, and the Polis* 58 (Alice Ramos ed., 2000); Robert Sokolowski, *What Is Natural Law? Human Purposes and Natural Ends*, 68 *The Thomist* 507 (2004).

<sup>16</sup> See Thomas Aquinas, *Summa Theologica*, Part I-II, Q. 94, Art. 2 (Fathers of the English Dominican Province trans., Christian Classics 1981) (1911) [hereinafter *Summa Theologica*]; John Finnis, *Aquinas: Moral, Political, and Legal Theory* 82 (1998).

<sup>17</sup> See generally Thomas E. Hill, Jr., *Dignity and Practical Reason in Kant's Moral Theory* (1992).

<sup>18</sup> See *Summa Theologica*, supra note 16, Part I-II, Prologue.

<sup>19</sup> *Id.* Part I-II, Question 91, Article 2.

Kant's understanding of self-governance departs radically from that of St. Thomas Aquinas. For Kant, self-governance required that human autonomy should be unconstrained by anything extrinsic to reason itself. He excluded from the exercise of reason, either in its determination of what is of worth or what is to be done, consideration of bodily tendencies or sensual desire. They were to be excluded because they are a manifestation of a deterministic causality characteristic of the mechanical.

If the ends that bodily tendencies and desire have in view cannot provide grounds for what ought to be done, then practical reason must find the source of moral obligation within its own denuded resources. Since Kant regards the exercise of reason unconstrained by anything extrinsic to reason as the guarantee of autonomy, the principle that shows us how we discover what is obligatory must be found within reason itself. The principle is that, since autonomy is the source of what is valuable, we must in our choices respect the autonomy of every other moral agent: we must always treat [\*557] humanity, in oneself as well as in others, as an end and never as a mere means.<sup>20</sup> Because, however, Kant lacks a unified, teleological understanding of the human person, and has an essentially mechanistic conception of the human body, his understanding of humanity lacks the kind of content that would give a substantive specification to what it means to treat humanity as an end.<sup>21</sup> In consequence, the Kantian legacy, as it has influenced ordinary culture, has seen a strong emphasis placed on the idea that we determine for ourselves, in an unconstrained fashion, what is to count as valuable; while people are left to what are regarded as their sub-rational desires and drives to provide the real candidates for what is to count as valuable and what, therefore, are to count as "reasons for action."

Third, because Kant did not succeed in overcoming the view that it is sub-rational desires and drives that provide the motivating goals of human conduct, he failed to rescue moral reflection from a sense of the loss of objective values which follows from a loss of the sense of the body as intrinsic to the person and the bearer of tendencies that point to ends constitutive for human fulfillment. The loss of a sense of objective values has served to encourage intellectual sympathy for the claims of preference utilitarianism.

This is the background in the history of ideas to the breakdown in the relationship between human freedom and human bodily nature which Pope John Paul II diagnosed in *Veritatis Splendor*:

A freedom which claims to be absolute ends up treating the human body as a raw datum, devoid of any meaning and moral values until freedom has shaped it in accordance with its design. Consequently, human nature and the body appear as presuppositions or preambles, materially necessary, for freedom to make its choice, yet extrinsic to the person, the subject and the human act. Their functions would not be able to constitute reference points for moral decisions, because the finalities of these inclinations would be merely "physical" goods, called by some "pre-moral." To refer to them, in order to find in them rational indications with regard to the order of morality, would be to expose oneself to the accusation of physicalism or biologism. In this way of thinking, the tension [\*558] between freedom and a nature conceived of in a reductive way is resolved by a division within man himself.<sup>22</sup>

Although here John Paul II was focusing on errors in moral theology resulting from a dualism of body and person, these errors had become widespread in theology precisely through the influence of philosophical currents that have had a large influence on the cultural assumptions of our age. Those same currents have had a decisive influence in shaping much bioethical thinking, which serves to rationalize choices in regard to sexuality, the begetting of children, and the status of the child, choices which, in turn, have served to further subvert the purchase that the normative pattern of marriage has on people's thinking and choices. At this point we can turn to a consideration of certain ideas re<ced>ues, characteristic of bioethical discourse, which are offered in support of choices contrary to marriage as the relationship that is required for the good of the child.

## B. Ronald Dworkin and Peter Singer

<sup>20</sup> See Roger Scruton, *Kant* 70 (1982).

<sup>21</sup> For a pithy critique of Kant, see John Finnis, *Natural Law: The Classical Tradition*, in *The Oxford Handbook of Jurisprudence and Philosophy of Law* 1, 7 (Jules Coleman & Scott Shapiro eds., 2002).

<sup>22</sup> *Veritatis Splendor*, supra note 11, P 48 (emphasis omitted, emphases added).

First, I want to highlight select features of the thinking of two figures who have been influential in bioethical debate and who can be taken as representative of influential currents of thought in our culture. There is a certain arbitrariness about selecting just these two figures, but one can see in them characteristically modern manifestations of the intellectual tradition that I sketched in the previous section. Ronald Dworkin has been an influential voice in the liberal jurisprudence of biomedical law-making. Peter Singer's *Practical Ethics*<sup>23</sup> is probably the most widely used text in courses on applied ethics, including bioethics, in the English-speaking world.

There are two features of Dworkin's thinking that are of particular relevance to bioethical decision making. The first is his anthropological dualism. This comes out in his understanding of the "intrinsic value" of human life. For Dworkin, the reasonable "interpretation" of this value of human life is the "liberal" view that "life's inherent value ... depends on the intrinsic importance of human creative investment" in it, i.e., how people "shape their own lives," so that the life which is sacred and inviolable is not "biological life" but the "human life ... created ... by personal choice, training, [\*559] commitment, and decision."<sup>24</sup> "Recognizing the sanctity of life," Dworkin writes, "means ... not frustrating investments in life that have already been made. For that reason, liberal opinion cares more about the lives that people are now leading, lives in earnest, than about the possibility of other lives to come."<sup>25</sup> As the context makes clear, the "other lives" referred to as possibilities are actual unborn children. Dworkin's elevated rhetoric simply replicates a commonplace distinction made by a number of influential figures in the field of bioethics:<sup>26</sup> the distinction between "mere biological life" (i.e., what unborn babies, infants, and the seriously brain-damaged are deemed to possess) and the life which has been given shape and direction by the exercise of developed psychological abilities; in particular, the ability to understand and to choose. It is the exercise of these conscious abilities that confers value on a life; mere bodily existence is devoid of intrinsic value. Here we have a characteristic modern descendant of Cartesian dualism.

The second important feature of Dworkin's thinking of particular relevance to bioethics is his understanding of the value of autonomy; it derives, as he sees it,

from the capacity it protects: the capacity to express one's own character - values, commitments, convictions, and critical as well as experiential interests - in the life one leads. Recognizing an individual right of autonomy makes self-creation possible. It allows each of us to be responsible for shaping our lives according to our own coherent or incoherent - but, in any case, distinctive - personality.<sup>27</sup>

[\*560] Dworkin calls this the "integrity" view of the value of autonomy, but it would be better named the "self-expression" view of the value of autonomy. At the heart of the Dworkinian notion of self-expression is a view of liberty which accommodates radical choice of values and commitments. Hence Dworkin's fondness for the (in)famous "mystery" passage in the joint opinion of Justices Sandra Day O'Connor, Anthony Kennedy and David Souter in the Supreme Court's ruling in *Planned Parenthood v. Casey*:<sup>28</sup> "At the heart of liberty is the right to

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<sup>23</sup> Peter Singer, *Practical Ethics* (1979) [hereinafter Singer, *Practical Ethics*].

<sup>24</sup> Ronald Dworkin, *Life's Dominion: An Argument About Abortion and Euthanasia* 157, 93 (HarperCollins 1993). On the purposes, fundamentally inconsistent with recognition of the sanctity of life, for which Dworkin rhetorically appropriates the language of "sacredness/sanctity of life," see *Euthanasia, Clinical Practice and the Law* 122 n.8 (Luke Gormally ed., 1994).

<sup>25</sup> Dworkin, *supra* note 24, at 99.

<sup>26</sup> See, for example, a comparable distinction made by the English philosopher Mary Warnock, who has been highly influential in shaping public policy, between simply "being alive in a biological sense" and the specifically human consciousness of "having 'a life' that is to be led." Mary Warnock, *The Uses of Philosophy* 35 (1992). Only those possessing such consciousness, and responsibly exercising the abilities to lead their lives, have valuable lives. Human beings with merely "biological life" cannot have lives with distinctive significance or value. For more, see Warnock's second chapter, entitled "Man's Duties to his own Species," in her book *The Uses of Philosophy*.

<sup>27</sup> Dworkin, *supra* note 24, at 224 (emphasis added).

<sup>28</sup> [505 U.S. 833 \(1992\)](#).

define one's own concept of existence, of meaning, of the universe, and of the mystery of human life." <sup>29</sup> The notion that there are basic truths to be recognized in the shaping of one's life has disappeared and been replaced by a radical subjectivism. Autonomy as protective of "self-expression" encompasses what Dworkin calls "procreative autonomy." Procreative decisions (bearing on contraception, abortion, and use of reproductive technologies) are fundamental for what is at issue in self-expression - our sense of "the ultimate purpose and value of human life itself"; <sup>30</sup> so there must be liberty to make those decisions in just the way one finds consistent with the direction one wants to give to one's life.

If Dworkin is a representative figure in the scope he accords to considerations of autonomy in ethical reasoning, Singer is the most conspicuous representative of the dominant form of utilitarianism in the field of bioethics - preference utilitarianism, that species of utilitarianism for which what counts in determining choice of a course of action is those consequences that serve to maximize satisfaction of desires across a population. <sup>31</sup> Desires, which are what motivate action and which, in Singer's view, are essentially self-interested, cannot be qualitatively distinguished, because reason has no role in distinguishing between worthwhile and worthless desires. The role Singer seeks to give to reason is designed to meet both his requirement that ethical conduct should be conduct in accord with standards and his belief that a standard is a standard only if what **[\*561]** applies to me does so because it applies to everyone. <sup>32</sup> A standard is relevantly universal in this way if it takes account of the "interests," in the sense of desires, of others as well as of my own. <sup>33</sup> One rather obvious problem internal to this account of ethical reasoning is that if motivation is essentially self-interested and not subject to rational evaluation, then it is difficult to see on what basis "standards," as understood by Singer, can have any authority in a person's practical reasoning. <sup>34</sup>

In making satisfaction of interests, in the sense of conscious desires, determinative of choice, Singer is parasitic on the dualism that privileges consciousness, though in his case desires attributable to other forms of animal consciousness might be candidates for consideration in the consequentialist calculus. What matters is the intensity of desire. Some human beings are too undeveloped or too retarded to have desires, or to have precisely the kind of desires that qualify for inclusion in a particular calculation of desire satisfaction. An unborn baby or an infant or a young child will lack a concept of himself as someone with a future and the associated desire to continue into that future, and so can have no claim not to be killed in the face of an adult for whom his existence is an obstacle to her projects. <sup>35</sup> Singer, along with a number of other contemporary philosophers influential in the field of bioethics, has appropriated the word "person" to apply to human beings (and some other animals) capable of exercising such conscious abilities as find expression in "desires." Those human beings who lack exercisable conscious abilities are "non-persons"; non-persons lack "moral status" or basic rights. <sup>36</sup> Here the dualism of body and consciousness has

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<sup>29</sup> *Id.* at 851. For Dworkin's encomium to the opinion, see Ronald Dworkin, *The Center Holds!*, N.Y. Rev. of Books, Aug. 13, 1992, at 29-33. The "mystery" passage plays a key role in the argument of the Philosophers' Brief in favor of the legalization of assisted suicide. See Ronald Dworkin et al., *Assisted Suicide: The Philosophers' Brief*, N.Y. Rev. of Books, Mar. 27, 1997, at 41-47.

<sup>30</sup> Dworkin, *supra* note 24, at 158.

<sup>31</sup> See Singer, *Practical Ethics*, *supra* note 23, at 10-13.

<sup>32</sup> *Id.* at 11.

<sup>33</sup> *Id.* at 12.

<sup>34</sup> *Id.* See Stephen Buckle, *Peter Singer's Argument for Utilitarianism*, 26 *Theoretical Med. & Bioethics* 175 (2005), for a lucid exposition of the problems internal to Singer's position.

<sup>35</sup> See Singer, *Practical Ethics*, *supra* note 23, at 81 ("[A] being which cannot see itself as an entity with a future cannot have a preference about its own future existence.").

<sup>36</sup> For a discussion of the arbitrariness of Singer's position, see Jenny Teichman, *Humanism and Personism: The False Philosophy of Peter Singer*, *Quadrant*, Dec. 1992, at 26-29.

been translated into a dualism of persons and non-persons. Dworkin and Singer variously exhibit characteristic features of the phenomenon that Cardinal Trujillo would refer to as "dehumanization" or "depersonalization."<sup>37</sup>

**[\*562]**

C. What Gets Justified

If we understand the natural institution of marriage as finding its intelligibility by reference to the good of the child, we can identify a number of practices, which are subjects of bioethical reflection, and which have progressively contributed to the dismantling in people's minds of a coherent understanding of marriage. They have done so precisely by detaching sexual relationships from their essential orientation to the good of the child, and then detaching the child from his or her locus within the marital relationship: as generated as the fruit of that relationship, accepted unconditionally as a gift, and reared within the milieu sustained by the parents' unreserved commitment to each other and therefore to the child. I shall simply name these practices here, and briefly identify typical forms of justification for them by reference to the positions of Dworkin and Singer, which I outlined in the previous section.

The practices that have undermined the sense of sexual relationships as essentially ordered to the good of the child are contraception and abortion. The practices which have detached the child from his proper relationship to his parents are the artificial reproductive technologies - such as In Vitro Fertilization ("IVF") and Gamete Intrafallopian Transfer ("GIFT"). The availability of these technologies to unmarried people, including homosexual couples, and of donor insemination to unmarried women, has served further to intensify the perception of the child as a "commodity" produced for the satisfaction of adult desires, rather than as a gift supervening on the sexual expression of committed love. Pre-implantation diagnosis, sex selection, and proposals for "designer babies" all contribute to the progressive commodification of the child. The degradation of the child as disposable matter, already present in abortion, is carried further in embryo experimentation. This degradation of the child is deeply destructive in a culture of any strong sense of the good of the child as a central and fundamental value, a value that marriage and the family exist to serve.

The idea that there is anything morally problematic about contraception is foreign to a majority of people in our society, and certainly to a majority of the opinion-forming elite. It is a standard position of secularist thinkers that there is no distinctive good at issue in sexual activity, so no distinctive virtue needed in sexual conduct **[\*563]** (as Christians have understood the virtue of chastity to be needed);<sup>38</sup> what are required are those dispositions thought to be commonly required in many types of human relationship - dispositions to respect the autonomy of the other, to deal fairly, to act with sensitivity, and so on. Since no distinctive human good is at issue, an increasingly wide range of sexual activities, as polymorphous desire dictates, are thought acceptable. Peter Singer's recent observations on the topic merely state in a characteristically unambiguous way the logic of this position:

Not so long ago, any form of sexuality not leading to the conception of children was seen as, at best, wanton lust, or worse, a perversion. One by one, the taboos have fallen. The idea that it could be wrong to use contraception in order to separate sex from reproduction is now merely quaint. If some religions still teach that masturbation is "self-abuse," that just shows how out of touch they have become. Sodomy? That's all part of the joy of sex, recommended for couples seeking erotic variety.<sup>39</sup>

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<sup>37</sup> See Trujillo, *supra* note 1, at 304-05, 309, 333.

<sup>38</sup> Simon Blackburn, Professor of Philosophy at the University of Cambridge, in the context of raising skeptical doubts about the meaning of "natural ends," observes: "There is nothing particularly virtuous about confining ourselves to ... 'natural' ways of ... sexual behaviour." Simon Blackburn, *Being Good* 85-86 (2001).

<sup>39</sup> Peter Singer, *Heavy Petting*, *Prospect*, Apr. 2001, at 12 [hereinafter Singer, *Heavy Petting*]. The first sentence of this quote is a typical Singerian travesty of traditional teaching, as can be seen from the fact that Catholic tradition has approved of the marriage of sterile couples providing that they can engage in intercourse of the generative kind, thereby becoming "one body," though the behavior will in the nature of the case be incapable of actually generating. See, e.g., Pope Paul VI, *Humanae Vitae* [Encyclical Letter on the Regulation of Birth] P 11 (St. Paul ed. 1968).

These comments are merely prefatory to Singer's approving observations on the pleasures of bestiality, part of "the inexhaustible variety of human sexual desire," only to be criticized if it involves cruelty to the animals.<sup>40</sup>

Abortions are very often resorted to in the event of failed contraception. On the practice of abortion, Singer's position is a ruthless application of his preference utilitarianism. His view is that we should,

accord the life of the fetus no greater value than the life of a nonhuman animal at a similar level of rationality, self-consciousness, awareness, capacity to feel, etc. Since no fetus is a person, no fetus has the same claim to life as a person. Moreover it is very unlikely [\*564] that fetuses of less than 18 weeks are capable of feeling anything at all, since their nervous system appears to be insufficiently developed to function. If this is so, an abortion up to this point terminates an existence that is of no intrinsic value at all. In between 18 weeks and birth, when the fetus may be conscious, though not self-conscious, abortion does end a life of some intrinsic value, and so should not be taken lightly. But a woman's serious interests would normally override the rudimentary interests of the fetus.<sup>41</sup>

Dworkin's position on abortion follows from two features of his thinking to which we have already referred: first, the view that what is intrinsically valuable about a human life is not "biological life" but the investment people have made in it - what they have "made of it." Second, a woman should be free to choose to end a pregnancy, because the procreative autonomy she enjoys is simply the exercise, in regard to the generation and bearing of children, of a freedom that she rightly enjoys in all matters where it is properly up to a person to decide what is to count as valuable in his or her life. It is up to a woman to decide whether continuing a pregnancy fits with her other choices and commitments. What is at issue here for Dworkin are "convictions that are fundamental to moral personality" because of the role they play in self-expression.<sup>42</sup>

Dworkin's views on the reach of procreative autonomy have been extended well beyond contraception and abortion by John Harris.<sup>43</sup> He has appealed to the notion of procreative autonomy to support use of, and guaranteed access to, a wide variety of assisted reproductive technologies, including IVF, use of "donor" ova and sperm, use of cadaveric and foetal ova and of posthumous sperm, pre-implantation diagnosis and sex selection, cloning and the production of "designer babies." Harris objects to the idea that adults seeking to make use of these practices and techniques should be subjected to tests for their suitability as parents.<sup>44</sup>

[\*565] In the libertarian smorgasbord of "reproductive choices" that procreative autonomy is invoked to justify, claims of self-expression have pretty well obliterated any recognizable concept of the good of the child and of the claims consideration of that good imposes. The concept of parenthood that is intrinsic to the traditional understanding of the natural institution of marriage, a concept which can only find its concrete embodiment in faithful commitment to the requirements of that institution, is bound to be obscured by an individualist ideology of self-expression.

### III. What Can Be Done?

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<sup>40</sup> Singer, Heavy Petting, *supra* note 39, at 13.

<sup>41</sup> Singer, Practical Ethics, *supra* note 23, at 118.

<sup>42</sup> Dworkin, *supra* note 24, at 157.

<sup>43</sup> Harris is a one-time doctoral student of Dworkin's. Probably the most influential bioethicist in the United Kingdom, he is the Sir David Alliance Professor of Bioethics at the Institute of Medicine, Law and Bioethics, at the University of Manchester. See the University of Manchester, [http://www.law.manchester.ac.uk/aboutus/staff/john\\_harris/default.htm](http://www.law.manchester.ac.uk/aboutus/staff/john_harris/default.htm) (last visited Oct. 16, 2006), for a short biographical sketch demonstrating the scale of his influence.

<sup>44</sup> See John Harris, Rights and Reproductive Choice, in *The Future of Human Reproduction: Ethics, Choice and Regulation* 5, 6-7 (John Harris & Soren Holm eds., 1998). For comparable claims for reproductive freedom in the North American context, see generally John Robertson, *Children of Choice: Freedom and the New Reproductive Technologies* (1994).

I divide my reply to this question into three brief parts, one dealing with what one might call the intellectual response to the challenges of "individualism," the second with the political response to the plight of the institution of marriage, and the third with the religious response.

#### A. The Intellectual Response

If there is truth in my claim that the ideological rationalization of practices subversive of marriage and the family, of the kind we have surveyed, has its roots in a centuries-long modern philosophical tradition, then we have to face the challenges posed by the defining moments in that tradition. In particular, we need to recover, in ways that can be commended to our contemporaries, an understanding of the unity of the human bodily person informed by a rational soul. We need to recover a teleological understanding of human life (and indeed an understanding of the fundamental role of teleology in explanation generally) and of the ends of human life. And in the light of that understanding, we need to articulate an understanding of human freedom, the authentic exercise of which is defined by its respect for the human good. These are large tasks in the face of the intellectual objections and moral obstacles to their attainment which our culture presents.

#### B. The Political Response

Pessimistic resignation to the plight of the institution of marriage should certainly be avoided, though it may be difficult to resist in some parts of the world. So political struggles, backed by sound jurisprudence, should be engaged in to resist legislative displacement [\*566] of the traditional understanding of marriage by revisionary conceptions embracing "gay marriage." The political struggles can certainly be aided by empirical and sociological studies on the consequences of the extent to which a traditional understanding of marriage has already lost its purchase in the actual lives of many citizens of contemporary societies.

#### C. The Religious Response

It is a fact that the Mosaic law accommodated divorce,<sup>45</sup> and so was at variance, as Jesus explained, with God's primordial intentions for the institution of marriage - the natural institution of marriage.<sup>46</sup> The Mosaic provision for divorce was made because of the "hardness" of people's hearts. What replaces the heart of stone with a heart of flesh is the grace of Christ and the Holy Spirit "poured out into our hearts."<sup>47</sup> So if there is to be a rediscovery of marriage in our societies, a renewal of the authentic institution of marriage, it can only be through conversion to Christ. The ideological defenses of practices subversive of marriage, family, and parenthood, which I have reviewed in this article, provide seductive rationalizations for ways of life that effectively harden people's hearts, and make them highly resistant to intellectual apologetic. So the most fundamental activity required of the Christian confronting the contemporary crisis of marriage is that of evangelization, which disposes people to conversion. Christian conversion will lead to the renewal of Christian community within the Church, and it is Christian communities that will sustain a renewal of marriage in our decadent societies.<sup>48</sup>

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<sup>45</sup> Deuteronomy 24:1.

<sup>46</sup> Matthew 19:1-9.

<sup>47</sup> Romans 5:5.

<sup>48</sup> I have explained at somewhat greater length what I here call the intellectual response and the religious response in Gormally, *Teaching on Human Dignity*, supra note 8, at 23-30.