Response to the Commentators

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Introduction

Let me begin by expressing my thanks to Drs Pellegrino, Battaglia, and Fost for their thoughtful comments. They provided me with perspectives on the ethical issues involved in IVF that compelled me to think more carefully about these complex issues than I had previously.

In Response to Dr Pellegrino

Dr Pellegrino rejects my thesis that IVF does not wrong the various principals who are affected by its use. He claims that I have a "very restricted view of the moral life" because I ignore "those positive norms of beneficence that elevate ethics above law." This misconstrues my position, which is explained best in terms of a brief but apt characterization of beneficence offered by Dr Rosamond Rhodes. In a forthcoming article, Dr Rhodes observes that, "beneficence is...an important principle of ethics. It is derived from the understanding that anyone needing help would want others to provide it and require that we act for the good of others. Since morality demands that we treat others as we would wish to be treated ourselves, we are obliged to treat others with beneficence." Although not explicitly stated, health-care providers who are engaged in IVF purportedly are acting beneficently toward the infertile couple who is seeking help. I pursue the issue of possible wrongs in the use of IVF because if a wrong is committed, IVF cannot be viewed as being beneficent. Dr Pellegrino believes that wrongs are committed in the use of IVF; I do not.

Dr Pellegrino mistakenly attributes an argument to me that personhood cannot be conferred on the embryo until totipotency yields to specialized cellular development. Unless that happens, there is no individual to whom personhood can be attributed. This is Thomas Shannon's position, which I introduced to serve as a contrast to the position of the Catholic Church and not as a support for my notion of personhood as a social construct.

In response to my view of personhood as a social construct, Dr Pellegrino says, "If personhood is a social construct and conforms to no objective nature, then we are free to define humans into and out of humanity as well as personhood at will." As I pointed out, the DNA of the pre-embryo indicates that human life begins at conception. However, what about the contingent nature of personhood? Dr Pellegrino and others have conflated two concepts of personhood and used the characteristics of one, with its likely "malignant construals", to apply mistakenly to the other.

The history of genocide, slavery, and ethnic cleansing is marked by hatred, contempt of, and loathing for the victim as well as a relentless effort to strip the victim of those characteristics that would identify him or her as being much the same as the victimizer. The victim is marked as being subhuman. The result for European Jews, particularly during the 1940s, and American blacks, particularly in the slavery period in the American South, was an erosion of the rights that gave evidence of their status as persons to the point where so little vestige of personhood remained that they could be mistreated without constraint or compunction. To identify the Jew or black as a nonperson, thus, was an entirely pejorative act. In stark contrast, identifying the pre-embryo is not pejorative. This concept does not derive from hatred, contempt, or loathing; it is based on a completely different consideration than that which has been applied to Jews, blacks, and other victims of hatred. The concept of the pre-embryo is an element in a moral argument and not likely to be construed malignantly.

One might wonder, as Dr Pellegrino does, why personhood is established at the moment of birth. I have argued that this is the occasion when interactions between the infant and other human beings begin. What justifies this view? Personality is the quality of being a person in the sense of being a particular individual. It is personality as we recognize it in ourselves and as recognized by others, that is the product of human interaction, and this normally begins at birth.

Dr Pellegrino warns us that "unless certain moral claims of humans transcend culture and social preference, no human person is safe from being defined as a nonperson." I am not an ethical relativist and, therefore, agree with him in principle that there are moral claims that transcend culture and social preferences. However, I am less concerned with human beings being defined as nonpersons and more concerned with the fact that none of us really is safe from being treated as subhuman.

In Response to Dr Battaglia

I suspect that Donchin is correct about the existence of social pressures to produce biologically related children. However, as I indicated, both the quantity and intensity of the demands suggests that there are both emotional needs and social pressures to have biologic children.

Dr Battaglia believes that my description of the actual procedures are described in a detached manner. This is not entirely so, given the points reviewed under issue 2.

I regret the fact that Dr Battaglia, like Dr Pellegrino, missed the point of my focusing on whether IVF wrongs the principal parties rather than on beneficence. My response to Dr Pellegrino should serve to clear up this matter.
Dr Battaglia is skeptical of the good of IVF, referring specifically to the low success rate. It is my understanding that at least one fertility center has a success rate of 37% of achieving pregnancy for at least 12 weeks for women between the ages of 36 and 39, and 46% for women younger than age 36 (Andercck WS, Thomasma DC, Goldwirth A, Kushner T. The ethics of guaranteeing patient outcomes. Fertil Steril. 1998;70:416-421). I do not believe that this is a low success rate.

I agree with Dr Battaglia that valid informed consent in the use of IVF is a necessity. Anecdotal rather than hard evidence appears to suggest very uneven use of the informed consent process. Dr Battaglia is right in recommending research in this area, and I would add that any hard data collected should be made public so practitioners cannot hide behind false claims of the success rate of their procedures.

Dr Battaglia is correct in pointing out that person or persona originally referred to an actor’s mask. As Professor Arthur Cody has noted, it is somewhat ironic that person, which originally referred to what was inanimate and false, should have become a focal point for what is animate and real. The need for an investigation of the latter as well as a distinction between human being and person is the basis for the philosophical inquiry into personal identity, which began with John Locke in the 17th century. I follow Locke in saying that a human being and person is a living organism who can be identified by its biologic organization. I depart somewhat from Locke in defining a person as a human being capable of interacting with other human beings rather than identifying personhood with rationality.

Dr Battaglia seems to suggest that we would be better off without the concept of person, but this would not eliminate the ideas, problems, and issues that presently are associated with personhood. They would of necessity become linked to the concept of a human being. The law, as Dr Battaglia points out, defines personhood as beginning at birth. My reason for supporting this definition is an ethical concern, which has nothing to do with the law.

Biomedical ethics deals with human choices that compel us to ask, “What is the right thing to do in situations where what we do affects the lives of others?” Every new medical innovation requires us to identify the right choice among the new choices that are made available. IVF, as a new medical technology, generates its own unique set of choices and attendant ethical questions, as Dr Battaglia’s concluding lines suggest. The only way to eliminate these questions is to resolve them or to discard IVF altogether. The latter option would raise substantial ethical questions of its own.

**In Response to Dr Fost**

Dr Fost is correct in saying that “killing persons can be justified in some circumstances”, mentioning self-defense, just wars, perhaps active voluntary euthanasia, and the withholding or withdrawing of life-sustaining medical treatment. If it were justified to kill an embryo who was recognized as a person, this justification would be of a different sort than that suggested by his examples. In the case of self-defense, there is an intent to do harm or kill on the part of an attacking individual. In the case of a just war, in which large numbers of people participate, the same type of intention is operative. Embryos offer no intention to attack against which we need to defend. Nor do embryos have the intention to die, as is the case with the person who voluntarily consents to euthanasia. Finally, withholding or withdrawing life support from a person purportedly serves his or her interests, and embryos have no interests that call for the withholding or withdrawing of treatment. Thus, we cannot justify the killing of the embryo that is considered a person on these grounds. Indeed, I confess to an inability to conceive of a ground on which such a killing would be justified. Of course, my concession to the embryo-as-person advocate that killing an embryo would be wrong is an empty concession because I do not believe that the embryo is a person.

Dr Fost raises a more serious issue when he asks what would follow if there were a likelihood that a child conceived by IVF would be permanently disabled. When I spoke of the possible wrong done in the use of IVF, I was concerned with something inherent in this technology as a set of procedures that does damage. Dr Fost’s hypothetical example of a parent producing a child for the purposes of abuse and his realistic example of women who abuse drugs, thereby abusing their offspring, clearly are immoral, although they are not examples of intrinsic wrong done by IVF because the same immoral results can be achieved by coital means. However, attempts to increase the chances of pregnancy that result in multiple births, while not precisely an inherent part of the IVF procedures, are employed as if they are.

Dr Fost is correct when he says that a multiple embryo implantation where there is a high risk of severe disability transfers the cost from parent to child. Unless there is prior agreement, as he suggests, to implant only one or two embryos or to agree to fetal reduction if more than two embryos are implanted, there are grounds for stating that parents and caregivers have wronged the future child. However, this illustrates that IVF only violates the principal of beneficence under conditions of induced multiple pregnancies, and these conditions, notwithstanding ensuing financial and emotional complications, can be eliminated.
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