

Bioethics Outlook

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In this issue

In the first article, Gerald Gleeson reflects on the concept of 'the natural' in the Catholic tradition, and in particular on the implications of this understanding of the concept for the Church's teachings about the dignity of the human person.

In the second article, a draft discussion paper for the Australian Health Ethics Committee, Colin Thompson clarifies the moral significance of the idea of a 'conflict of interest'. This draft paper was published some years ago, on the website of the National Health and Medical Research Council, where it can still be found

Nature, Persons and Bodies

Gerald Gleeson

A recent newspaper report noted that:

The most frequently used word on new products in the last year was 'natural', according to a global survey of food and beverages conducted by the market researcher, Mintel. Natural appeared on nearly one in four products.... a 9 per cent increase on the previous year.

According to the article, headlined *Natural and healthy pushing ethical and green off the shelf*, health and well being is now a "dominant macro trend" for advertising and marketing campaigns.ⁱ As a Catholic ethicist, I was struck by this story because an understanding of what is "natural" has long been at the heart of the Catholic ethical tradition, which is rightly known as a *Natural Law* tradition. One aspect of this tradition is reflected in the idea that some of the conduct that is bad for us as human beings, or "against the Natural Law", is bad in the distinctive sense that it is "contrary to nature" or contrary to the way in which it is "normal" and reasonable for human beings – at their best – to think, to feel and to act. In this sense, for example, treating the bodies of the dead with respect is normal or natural to human beings. If we met people who simply discarded the bodies of their deceased along with the garbage we would be baffled to know what to say to them: we might wonder if they really were human, or whether their humanity hadn't been damaged by some terrible trauma.ⁱⁱ It was in this distinctive sense that, until quite recently, most people thought that homosexual activity was wrong *because* "contrary to nature", and likewise most people thought the idea of a same-sex "marriage" was contrary to the "obvious" purposes of nature.

This aspect of the Natural Law tradition is now much diminished in the minds of contemporary men and women, though as noted above it remains prominent in approaches to environmental ethics, and in the advertisers' macro-trend of "health and well being". Today, it is in the context of the physical environment that we are likely to encounter the claim that a course of action is wrong simply

because it diminishes natural eco-diversity or that GM food is bad because it is an “unnatural” tampering with nature, or that climate change must be prevented because it will destroy the natural environment.

Ironically, this concern with what is “natural” is less obvious in the case of what is good for human beings: same-sex marriage and *in vitro fertilisation* are now commonly regarded as reasonable for those people who request them. This change of sensibility has occurred, in part, because in our culture we have come to think of human beings as “persons”, rather than “natural beings”. We think of nature as a matter of biology and bodily functioning, and we think that what is “naturally” good for us as physical beings is less important than what is good for us as rational beings or *persons* – namely, individual freedom and self-determination, finding meaning in life, forming intimate relationships, and so on.ⁱⁱⁱ

This idea that *people* are more important than their *bodies* is at work in the widespread criticism that the Catholic Church’s teachings on sexuality, marriage and procreation exaggerate the importance of the human body and of what is supposedly “natural” for human beings. This idea is evident, for example, in the claim that, in relation to the adoption of children, it is more important for a couple to be good, loving parents, even if they are of the same sex, than for them to be literally father and mother, male and female; or in the claim that, in relation to the processes of reproduction – involving millions of sperm, many ova, and many embryos that fail to develop, the Church exaggerates the importance of the beginnings of life when teaching that every human embryo must be respected as a human person; or in the claim that, in regard to the use of IVF, whether a couple love and care for their child is more important than whether their child is the fruit of marital intercourse.

At the heart of each of these claims is the

idea that our bodies, in particular, our bodies as male or female with their reproductive capacities, are not as significant as Catholic teachings maintain. On the contrary, what matters more in each case is our identity as persons, as self-determining, responsible and “authentic” individuals.^{iv}

A New Vatican Instruction:

Dignitas Personae

A cultural sensibility permeated by the idea that people are more important than their bodies will struggle to receive the Catholic Church’s latest teaching on the ethical use of reproductive technology in the 2009 instruction *Dignitas Personae* (The Dignity of the Person). According to one critic, the Church is still “mired in the past”, failing “to accept [a] modern biomedical understanding of human conception”.^v Another critic, philosopher Peter Singer, echoes explicitly the objection I am concerned with. Singer writes:

Dignitas Personae says new human life should be generated through an act which expresses the reciprocal love between a man and a woman. But if by that the church is referring to sexual intercourse, then it surely has an unduly narrow view of what kinds of acts can express reciprocal love between a man and a woman.^{vi}

Dignitas Personae (DP) is an updating by the Congregation for the Doctrine of the Faith of its 1987 instruction *Donum Vitae* (DV), which suggests the change of title is significant. If *Donum Vitae* (“The Gift of Life”) (following *Humanae Vitae*) points to the physical reality of human life, *Dignitas Personae* – perhaps anticipating the objection I am examining – focuses on the human *person*. All its conclusions are said to flow from the dignity of the human person, rather than from claims about the body and human nature.

DP is divided into three parts: the first examines

the anthropological, theological and ethical aspects of human life and procreation; the second responds to new problems concerning procreation, in particular – techniques for assisting fertilisation, the freezing of human embryos, and pre-implantation diagnosis; the third responds to treatments involving manipulation of the embryo or the genetic makeup of cells, in particular – gene therapy, cloning, and the use of stem cells. My concern is the first part – the theological and ethical foundations for the conclusions reached in parts two and three (for the most part, negative conclusions). In its first part, DP seeks to establish a great affirmative “yes” to the dignity of each and every human person as the basis for its “no” to procedures it believes incompatible with that dignity (#37). The Instruction situates its teaching in line with the Church’s earlier papal encyclicals on social justice defending the human dignity of workers, by arguing that today “another category of persons is being oppressed” with respect to a fundamental right, viz. the unborn and their right to life (#37).

There are two key magisterial teachings in DP; first, that the human embryo has the dignity proper to a person (#5), and secondly, that the conception of a human person should occur in marriage and as the fruit of marital intercourse (#6). I call these *magisterial* statements for they are authoritative Church teachings, but they are not theology: it is the task of theology to explore, explain, develop and help communicate these teachings. I will note briefly the framework DP suggests for this theological exploration, before asking whether its teachings subordinate people to their bodies.

The embryo as person

Even though DP emphasises the human *person*, and thereby seeks to move away from what is often said to be the “biologism” of Catholic teaching – most famously satirised

in the Monty Python song *Every sperm is sacred* – its foundational first part often uses the language of nature, rather than person. For example, it speaks of “human biological structures” and “processes of human generation”; it says “the embryonic human body” [not the embryonic human person!] develops progressively according to a well defined program with its proper finality”(#4). To some extent the language of nature and biology is unavoidable in discussing these issues. The critical question is: how are these natural process and structures related to the human person? DP repeats Donum Vitae’s central teaching that “the fruit of human generation... from the formation of the zygote demands the unconditional respect that is morally due to the human being in his bodily and spiritual totality. The human being is to be respected and treated as a person from the moment of conception...”(#4).

Like DV, DP acknowledges that the Church does not have authority to make philosophical or scientific claims.^{vii} Divine revelation does not tell us when human life begins: this is something we have to work out for ourselves, using sound human reasoning. DP repeats what is an essentially *ethical principle* in DV – human beings are to be *respected as persons* from conception onwards. DP notes that in formulating this principle, DV “did not define the embryo as a person” because it wished “to avoid a statement of an explicitly philosophical nature” (#5). How is this ethical principle to be justified? The principle presupposes, of course, the more general principle that respect is due to all human beings because they are persons. The issue is whether human embryos are truly human beings such that this respect is also due to them. Settling this issue presupposes scientific inquiry and philosophical argument. Scientifically – there is overwhelming evidence for the continuity of development from embryo to mature human; philosophically – there are sound

arguments for the embryo's unity of being as a single organism even at the earliest stage of human development.

The ethical principle in DV can be interpreted as a cautionary principle: given the scientific indications, DV asked rhetorically: "how could a human individual not be a human person?" DP reflects explicitly on this line of argument by noting that the ethical principle "presupposes a truth of an ontological character" and the "intrinsic connection between the ontological dimension and the specific value of every human life". The reality of human life, says DP, is such that there is no rational basis for positing "either a change in nature or a gradation in moral value" during the course of life. DP concludes that the human embryo has "the dignity proper to a person". Whereas DV's principle made a claim about *what we ought to do* – respect the embryo as a person, DP is making a stronger claim about *what an embryo is* – viz. a being with the dignity of a person (which is surely tantamount to saying that an embryo is a person, albeit in the very earliest stage of development).

Is the declaration that an embryo is a person an ethical claim or a metaphysical claim? Well, both: a person is a *being* with intrinsic *value* or dignity. The jointly ethical and metaphysical claim is not independent of scientific evidence: unless science supports or "indicates a personal presence at the moment of the first appearance of a human life", the ethical claim would collapse. Yet the scientific evidence does not necessitate the ethical claim, for experimental evidence always needs to be interpreted and understood – and this involves metaphysical reasoning, for example, about what it is for something to be *one* organism, rather than a collection of cells, to be an *organised unity* rather than a collection of systems and parts, and about what constitutes development rather than change of substance, and so on.^{viii}

The human person as fruit of marital intercourse

The second key teaching in DP is that the conception of a human person should occur in marriage and as the fruit of marital intercourse. Whereas the previous teaching concerns what a human embryo is (viz. a person), this teaching invites us to reflect on the appropriate context for the coming to be of a human person (viz. the sexual union of husband and wife as a communion of persons).

In setting out this teaching, DP again reflects the tension between nature and person. It quotes a recent statement of Benedict XVI: "The transmission of life is inscribed in nature and its laws stand as an unwritten norm to which all must refer". These laws "deserve to be recognised as the source that inspires the relationship between the spouses in their responsibility for begetting new children" (#6). The Pope's thought seems to be that just as marriage is natural and normal, so marital intercourse naturally and normally leads to new life (subject to the cycle of fertility). Spouses will recognise this "natural order" for the transmission of life, viz. the procreative potential of their sexual relations, and will allow this recognition to guide their conduct as persons. They will thus recognise that, in the natural order of things, their marriage is intended by God to be a loving "yes" to conceiving new life together as parents. Consequently, when husband and wife unite sexually, they bring about not merely a union of bodies with their mutual, potential fertility, but a *communion of persons* cooperating with God in the procreation of new life.

What many find questionable in this teaching is the claim that only marital intercourse, and not the use of reproductive technologies like IVF, can express the necessary marital "yes" to procreation. In repeating DV's teaching, DP says that it is "the specifically human values

of sexuality” that require procreation to be the fruit of marital intercourse (#12). DV identified three such values as shedding light on the link between marital intercourse and procreation: 1) the “inseparable connection” that God wills between the unitive and procreative meanings of sexual intercourse; 2) the unity of the person as bodily and spiritual, such that bodily union as spouses is also personal union as parents begetting the life of a new person; 3) the uniqueness and dignity of the child conceived, not as the object of a scientific procedure, but as the fruit of the marital act, as *someone* given by God in the context of the parents self-giving to each other. DV summarises these three values in the following way:

The moral relevance of the link between the meanings of the conjugal act and between the goods of marriage, as well as the unity of the human being and the dignity of his origin, demand that the procreation of a human person be brought about as the fruit of the conjugal act specific to the love between spouses. The link between procreation and the conjugal act is thus shown to be of great importance on the anthropological and moral planes, and it throws light on the positions of the Magisterium with regard to homologous artificial fertilization. (DV, II. B.4)

This is without doubt a “high teaching” that many find hard to accept. I would re-express the teaching in this way: marital intercourse is the only appropriate context for the coming to be of a new human being because it is the only kind of human activity which enables two persons together both to generate a new human being and also to respect that new human being as a unique person who transcends their generative act. That is to say, marital intercourse both leads to new life as its natural and normal “fruit”, and awaits the conception of new life as a “gift of God” that it does not control. This is because sexual union

is not itself the act of fertilisation nor the event of conception; in joining sexually spouses can at most share their mutual, potential fertility; whether a child is conceived is not up to them, but remains a gift to be received. The child conceived is both “their child” and not “their child”, is a unique someone whose primary relationship is to God.^{ix}

In saying this I am not suggesting that God works other than through normal biological processes; in the biological order, whether intercourse leads to conception depends on physiological processes and statistical laws. But husband and wife do not control these processes and laws; for their part, from their perspective, “all they can do” is to engage in sexual union and await its outcome.^x God’s action does not add to the biological processes: God works in and through reproductive processes, and constitutes new human life, whenever and however it emerges, as personal – as a someone called into relationship with God from the first moment of existence.

At this point, DP introduces a further consideration – that divine revelation purifies, completes and elevates our natural understanding. That embryonic human life has personal dignity is a truth we should be able to recognise by human reasoning alone. That embryonic human life is also sacred is a truth revealed to the eyes of faith. Life is *sacred* because every human person possesses an eternal vocation, is destined by the grace of Christ to share in the Trinitarian life of God (#8). This eternal destiny should lead us to look afresh at both human dignity and human procreation. Every human being not only has the dignity proper to a person as a responsible, self-determining subject, but is also a sign of God’s presence in the world, someone destined to be conformed to the image of Christ himself. The spousal act of human procreation, therefore, is not merely an act of reciprocal human self-giving

– an expression of the communion between husband and wife, it is also “a reflection of Trinitarian love” calling a new human person into being as someone destined to share the life of the Trinity. Spouses are thus invited to see their procreative acts as collaboration with God’s creative acts: their child is both the fruit of their act and “a new creation” that God is calling to himself.

In short, from the perspective of faith, the dignity of the human person is elevated into the sacred destiny of life in Christ; and the natural fruitfulness of marriage is elevated into a reflection of Trinitarian love.

The issue at stake: dualism of person and nature

Does the teaching in DP fall foul of the objection that it makes people less important than their bodies? Does the Church exaggerate the physical and biological by claiming that embryos are persons who should only result from the “personal” act of marital intercourse?

The short answer to the objection, from the vantage point of Church teaching, is that bodies cannot be less important than people because people *are* their bodies: whatever we do to human bodies, that we do to the people whose bodies they are.^{xi} DP would say that far from exaggerating the body, it is “personalising” the body – urging us to recognise what the body really is, the living person as such. To think otherwise is to make the mistake of separating people from their bodies; that would be a new form of dualism that distorts the truth of who and what we are. It follows that, if the Church is right, acting contrary to these teachings involves missing out on something – in the name of fulfilment as persons, we will forgo or lose an essential aspect of what it is to be a *human* person, viz. an aspect of our bodiliness. Such actions will involve a certain alienation from

an aspect of our own human nature.

When the Church’s teaching is put as starkly as this, it will be difficult for many people to accept, because same-sex ‘marriages’, IVF and contraception do not seem to involve ‘harm’ in the sense in which stealing or lying involve obvious harm to individuals and societies. How are people who engage in these activities missing out on something? How are they alienated from an essential aspect of their nature? This is hard to explain because, as Elizabeth Anscombe pointed out, whereas the wrongness of stealing and lying can be explained on purely utilitarian grounds, traditional Christian teachings on chastity are “supra-utilitarian” or “mystical”.^{xii} That is to say, what’s wrong fundamentally with unchaste actions is not their tangible harm (although that is often quite evident), but that they “dishonour” the human body – or dishonour the bodily existence of the person. Anscombe writes:

Sexual acts are not sacred actions. But the perception of the dishonour done to the body in treating them as the casual satisfaction of desire is certainly a mystical perception. I don’t mean in calling it a mystical perception that it’s out of the ordinary. It’s as ordinary as the feeling for the respect due to a man’s dead body... This too is mystical; though it is as common as humanity.^{xiii}

In the case of IVF, for example, and assuming that no human embryos are frozen, lost or destroyed in the process, Anscombe’s point would be that, even if an embryo suffers no obvious physical harm, the mere fact that an embryo is caused to come into existence as the result of a technological procedure amounts to dishonouring its body. Just as dead bodies are to be treated with respect, so embryonic bodies are to be treated with respect; in both cases, they are not to be “touched” in ways that fail to recognise what they are, *people’s*

bodies, whether people who have died or people who are just coming into being.

Clearly, in the context of human life and procreation, I am using the idea of “touch” in a more than literal sense. The beginning and the ending of a human life is a sacred moment, above all for the person whose life is at stake, but also for those affected by that beginning or ending (and even if they have no religious beliefs). How should we respect this sacredness? How may or should we intervene (or “touch” a person) when their life is just beginning or is about to end? Some forms of “touch” are clearly appropriate: e.g. medical interventions that facilitate the fertility of intercourse or assist the development of the embryo, or palliative care which eases the pain and symptoms of the dying person. Other forms of intervention are less obviously “natural” and appropriate, however, not because they involve physical “touching” as such, but because of the kind of relationship they assume, express or constitute between the person who is “touched” and those persons doing the “touching”. For example, when someone’s life is deliberately ended through euthanasia, or when a dead body is discarded, a person is wronged even if he or she suffers no tangible harm (since the person is no longer alive to be harmed!).^{xiv}

Likewise – arguably – in making human conception the goal of a technological procedure a person is wronged, even if they are not harmed in a physical way. Just as it is wrong to deliberately end a human life, so it seems wrong to deliberately initiate a human life. Why? Because in both cases, a life (and so the person whose life it is) is treated as something over which someone else exercises complete control – a kind of control that is inconsistent with respect for the other as a person. Of course, taking life would seem to wrong a person more gravely than would initiating a life. In practice, however, we

know that IVF procedures commonly involve the loss of much embryonic life, so perhaps the similarity is closer than we might first think – and this is not surprising if the same attitude of control over life is at work in both situations. Do we not wrong a person conceived through IVF if we make it possible for him or her later to say, truthfully, “my life was brought about at the expense of others being deliberately killed”?

I have summarised what I believe would be the Church’s response to the objection we are exploring. In short: just as death should be allowed to come about naturally, so human conception should be allowed to come about naturally as the fruit of the marital act, “untouched” by interventions that would wrong the person whose life is at stake, *because they would make that person’s life an object of total control.*

The perspective of the acting subject

In his encyclical *Veritatis Splendor* John Paul II enunciated a principle which I believe is both central to Catholic ethical teachings generally, and of special relevance to questions of reproductive ethics. The pope spoke of doing ethics *from the perspective of the acting subject*.^{xv} This means understanding the ethical significance of our actions primarily in terms of how they bear upon our being as persons or subjects, and as responsible agents. This agent perspective contrasts sharply with another perspective, that of a neutral observer. The observer perspective (sometimes known as the “god’s eye” view) is that aspired to by the now culturally dominant utilitarian or consequentialist ethical theories that would have us act so as to produce the best state of affairs overall – to maximise people’s happiness or the satisfaction of their preferences.^{xvi}

From a neutral observer’s perspective, there may not seem to be any harm involved in the practice of IVF, provided no embryos are

destroyed (and if embryos are destroyed, an observer may not see any “people” harmed!). From the first person perspective of the acting subject, however, things “look” rather different. For example, I cannot take a merely utilitarian approach to my own life: I don’t merely observe the fact that I am alive, and compare and contrast the good of my being alive with other goods in my life. My *being alive* presents itself (to me) as a good that inevitably engages my actions, for example as I do or do not take care of my health. I thereby realise that my life is a good intrinsic to what I am, a living person, and my choices and actions about my life and health are choices and actions about who and what I am as a person. I am a *living personal subject* and my life is the fundamental good without which I cease to be at all. In caring for my life and health, I am caring for the person I am. In respecting the life of another, I am respecting the person another is. From the agent perspective, there can be no practical dualism between person and bodily life.

Likewise, we are not observers of our sexuality and our reproductive capacities. We are engaged with and motivated by these goods (life, sexuality and so on) and in our intentional actions we cannot but take up and express attitudes towards them. The critical ethical question concerns the right ways to pursue these goods and so fulfil the various aspects of our nature as human beings. From the perspective of an observer, procreation may appear to be optional in relation to sexuality – after all, most sexual acts do not result in new human life. From the first-person perspective, however, procreation is essential to the experience of one’s sexuality: *in practice*, people cannot avoid the truth that genital actions are naturally ordered to procreation. This is why it would be irresponsible for a couple to have sexual intercourse without reflecting on whether their act might be procreative. Of course, in

most cases procreation will not be possible and a couple will know that. But knowing *that*, is simply the converse of knowing that in principle sexual union reveals and makes available one’s fertility. Even if scientifically, for a neutral observer, most acts of intercourse are unlikely to be procreative, *for participants* the natural procreative potential of genital union is essential to the kind of act it is – even if people disavow or exclude this potential. By highlighting the agent perspective, the Church’s teaching invites us to acknowledge what we are – *human bodily* persons. Being the persons we are cannot be separated from being the living, sexual, reproductive beings we are.

In relation to artificial reproductive technologies like IVF, the agent perspective alerts us to the significance of the procedures involved for both the genetic parents and the scientists. In using IVF, parents make their fertility available independently of their sexual intimacy; the Church asks them to reflect on whether, as subjects and sexual persons, this doesn’t involve treating their bodies and their reproductive potential as merely “material” separated from their personal intimacy. Instead of sperm and ova becoming available for fertilisation in the context of a reciprocal, marital act, they are made available to a third person, as a result of quite separate (solitary?) acts on the part of the spouses. If parents using IVF were to ask themselves, “what are we doing (in order to have a child)?”, would their answers not have to refer to separate, non-reciprocal actions in which their potential to be parents with each other is treated as something individual and merely biological, rather than as something personal to be discovered together in their marital intimacy? Likewise, when a third party receives biological “materials” with which to try to initiate the beginning of a person’s life, aren’t they receiving, not the personal gift of self, but what they must treat as merely

material for a procedure whose object is the “making”, rather than the begetting, of a child? Isn’t this why the scientist could later, truthfully, say to the child conceived, “I made you”? But is that something which anyone should ever be able to say of another human person? (And if it is not, doesn’t this suggest there is something wrong with IVF?)

A teaching at the service of conscience formation

I have written this last paragraph in the form of questions we might ask ourselves, as we reflect on the meaning of what we would be doing in using artificial reproductive technologies. Questions, rather than bald assertions, are appropriate in an approach to ethics that highlights the first-person perspective, and urges us to appropriate our bodiliness, and the significance of our sexual embodiment as male or female, and as potential parents.

Doing ethics from the first person perspective reminds us that ethics concerns our self-understanding and growth in virtue. Ethics is not about laws and rules imposed on a person by external authorities; ethics is first and foremost about the kind of people we become on the basis of our choices and actions, and about how rightly ordered actions flow from a rightly ordered moral character. It is always helpful to recall John Paul II’s teaching in *Veritatis Splendor*: the Church’s teachings are always at the service of conscience (VS, #64; cf. DP #10 for a slightly different nuance). These teachings, which Catholics recognise as authoritative, are intended to inform and guide moral decision making.

In the area of sexuality and procreation, the Church’s teachings should help us, in the first instance, to understand ourselves better: to appreciate who we are and how God has made us, and on this basis, to understand what conduct is in keeping with God’s plan for human happiness. This means understanding

that we are not simply persons, but also living beings with a specific bodily nature as male or female, which to a large part determines what is good for us. To some extent we can work out for ourselves what is good for us, but our understanding is clouded by many factors, including sin and culturally limited perspectives, and in some instances we need God’s revelation to show us what is good for us.

At the heart of a Catholic self-understanding is recognition of God’s creative intentions. From the perspective of God’s providence, human nature is not the accidental outcome of an evolutionary process, but the chosen expression of God’s creative plan (working through an evolutionary process). Thus *Genesis* speaks of humankind as both created “in the image of God” and created as “male and female”, suggesting that it is only as male and female together that humankind “images” God. This is a rather opaque text - it surely does not imply that there is some form of sexual duality in God. It does suggest, however, that there is an incompleteness about every human individual: we are created for relationship, with God and with others. More specifically, as persons who are sexual beings, we are created for that relationship in which we can give ourselves fully to another as both persons and living bodies, viz. in a committed marriage open to procreation, with a fruitfulness that is an image of the “fruitfulness” of God’s Trinitarian love.

In modern developed societies, many people – including many Catholics – find it difficult to receive this teaching. I have tried to articulate the fundamental difficulty people have in terms of the culturally dominant view that people are more important than either their bodies or the kind of sexual activity they engage in. The Church’s teaching challenges us to reflect on whether this view is in fact motivated by our culture’s exaggerated

emphasis on (dis-embodied) persons, in place of a humble acknowledgement of our created human nature. I have tried to explain the Church's teaching in a way that might lead people to see it as the articulation of a self-understanding as living human beings, and so as affirming – not exaggerating – the unity of persons and their bodies. Critics who say the Church exaggerates the importance of created nature and the "laws" of its normal functioning need to engage with the Church's positive vision of the living human person more explicitly than they have to date.^{xvii}

FOOTNOTES

ⁱ *The Sydney Morning Herald*, 5th Feb 2009, p. 24.

ⁱⁱ See G. E. M. Anscombe, "Contraception and Chastity" in *Faith in a Hard Ground*, Edited by Mary Geach & Luke Gormally (Imprint Academic: Exeter, 2008), 170-191; Joseph Boyle, "Contraception and Anesthesia: A Reply to James DuBois," *Christian Bioethics* 14/2 (2008): 217-225.

ⁱⁱⁱ We also think, rightly, that respect for human being as persons should take priority over judgments about whatever may be natural or unnatural in their lives or lifestyles.

^{iv} On the importance of 'authenticity' as a modern moral ideal, see Charles Taylor, *The Ethics of Authenticity* (Cambridge, MA: Harvard University Press, 1992). Lawrence Krauss, in *New Scientist* No. 2694, p. 25.

^{vi} *The Dominion Post* (Wellington, New Zealand), Saturday Jan 31st, 2009.

^{vii} See John Paul II's encyclical *Fides et Ratio* for discussion of the proper competence of the Magisterium in relation to the various human sciences.

^{viii} Some thinkers still puzzle over the processes involved in embryonic development and the allied philosophical issues raised by

the phenomena of embryo splitting and re-combination. For a powerful response to these puzzles, see Robert P. George and Christopher Tollefsen, *Embryo – A Defense of Human Life*. New York: Doubleday, 2008.

^{ix} It is often objected that in IVF, also, scientists cannot ensure a successful outcome. However, the immediate goal of IVF is to achieve fertilization; this goal defines what the act of IVF is. By contrast, sexual union is defined by the goal of mutual, bodily self-giving; its immediate and defining goal is not fertilization.

^x The perspective of the spouses as acting subjects will become a central theme later in this article.

^{xi} Language can mislead us here: to say, *we are bodies*, could suggest the materialist view that we are nothing but bodies! The materialist mistake is to think living bodies are inert bodies to which "life" is added, or that a corpse is a human body minus life! Living bodies are "alive all through", they are en-souled (en-spirited, in the case of humans). Soul is not added to an existing body, soul is what makes a living body to be what it is. A corpse is not a human body.

^{xii} Anscombe, "Contraception and Chastity", 186-9.

^{xiii} Anscombe, "Contraception and Chastity", 187.

^{xiv} Cf. Anscombe, "Contraception and Chastity", 187,

^{xv} "In order to be able to grasp the object of an act which specifies that act morally, it is therefore necessary to place oneself *in the perspective of the acting person*. The object of the act of willing is in fact a freely chosen kind of behaviour. To the extent that it is in conformity with the order of reason, it is the cause of the goodness of the will; it perfects us morally, and disposes us to recognize our ultimate end in the perfect good, primordial love." John Paul II, *Veritatis Splendor*, # 78.

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CLARIFYING CONFLICTS OF INTEREST

A draft discussion paper for National Health and Medical Research Council

- Colin Thomson*

If an investigator participates in the assessment of his own grant funding application or if a company director votes on the letting of a contract to himself, we say readily that each of them has a conflict of interest. By that we mean that their involvement in the decision is improper and therefore the decision itself is unsound.

These are simple examples. How are they best defined? The expression 'conflict of interest' refers to conflicting obligations or influences to which an individual is subject in the course of a relationship or activity. Conflicts of interest often involve financial interests, but what other matters should count as an "interest"? Some have tried to define the nature of an 'interest' and the conditions for a 'conflict' more precisely, while others have sought to distinguish conflicts of interest from conflicts of loyalties or obligations. ⁱ

This paper seeks to provide a definition of a conflict of interest, of what an interest can be, in ethical and other contexts and suggest some ways that such conflicts might be managed.

Defining conflicts of interest

Conflicts of interest may be the result of malign motivations of particular individuals but more often arise out of the structural features of relationships or practices. An interview committee member who is determined to block a specific applicant out of revenge has a conflict of the first, motivational, kind, while an investigator in a narrow field of expertise who is asked to review a competitor's application has a conflict of the structural kind. In many situations of the latter kind, it is impossible to eliminate conflicts of interest.

Rather, any possibility that they may arise and any situation where they have arisen should be identified and steps taken to disclose conflicts of interest openly and control their impact. The need for identification of potential rather than only actual conflicts of interest arises because individuals are often not in the best position to judge either whether there is a conflict, or, if there is, whether in the face of it they can still judge and act fairly and dispassionately. Declaring a possible conflict functions to open the decisions on those questions to all those involved.

Undermining judgment?

One explanation of the undesirable consequences of conflicts of interest is that they *undermine* judgment. David Resnikⁱⁱ cites Michael Davis's definition:

"A person has a conflict of interest if (a) he is in a relationship with another requiring him to exercise judgment in that other's service and (b) he has an interest tending to interfere with the proper exercise of judgment in that relationship."

Resnik identifies two ways in which a conflict can undermine judgment. First, it may bias a person's judgment and second, render a person's judgment unreliable. In science, Resnik argues, judgment is to be objective, "...independent of personal; beliefs, biases, political ideologies, or economic interests..."^{iii iv} To these, Resnik adds a third – namely that a conflict of interest can lead to the corruption of the will of a person so that he cannot exercise his objective judgment.^v

The need to identify interests, declare and control the effects of their conflicts lies in their potential to affect judgement or motivation, as Resnik says. Valuable as this analysis is, its definition of an “interest” as something that may undermine a person’s judgment is likely to vary widely from person to person, rendering a definition dependant on the strength of mind or will of the conflicted person. Further, there are many factors that are likely to undermine or affect judgment that are not usually regarded as conflicts of interest. A company director’s judgment can be undermined, or at least rendered unreliable by his anxiety about the health of a close family member, but that would not be dealt with as a conflict of interests. An employee so affected may have a duty to disclose such a (temporary) situation to protect themselves and their employer from the consequences of poor decisions. The reason lies in their loss of capacity. In a situation of conflict of interest, capacity is undiminished but subject to competing influences. Something beyond the impact of the matter on a person’s judgment is needed to define an interest that can lead to a conflict of interest situation.

Individual roles & responsibilities and institutional goals

For institutions, the important consideration is the effect of a conflict of interest on the decision processes and the decisions that result.^{vi} This suggests that there is a link between a conflict of interest and the role, in the institution, of the person affected by the conflict. That link may lead to recognising a conflict only if the effect on judgment distorts the role a person subject to such a conflict is to perform. Further, the role of an individual and attached responsibilities will be related to the goals of the institution. So, a company director, whose role is to act for the interests of the company, distorts that role and is involved in a conflict interest when he votes for a contract or payment to be made with or

to himself. His financial gain is not relevant to the goals of the company. However, where a member of a town council votes against a development proposal because, on balance, she considers the potential environmental damage outweighs the financial or social benefit to the community, she is not distorting her role and is not affected by a conflict of interest. Instead, she is bringing to the performance of her role considerations that are relevant to the enterprise of the council. The environmental concerns expressed in the exercising of judgment contribute to achievement of the council’s goals.

Institutions are also concerned to identify potential and apparent conflicts. Resnik identifies these as, respectively, interests that *could* interfere with a person’s judgment (potential) and interests that may *appear* to an observer to involve a conflict, even if they in fact do not (apparent). Both of these, especially the latter, are likely to be related to the person’s role in the achievement of the enterprise’s goals. Institutions, especially those charged with public responsibilities or the stewardship of public money, need public trust – something that is likely to be eroded if not lost by the appearance of conflicts of interest affecting their decisions.

What is an “interest”?

Determining when a person has, or may have, an interest that can conflict may therefore need a more objective approach. The relationships suggested among an interest, the role of person plays in an enterprise and the goals of the enterprise can be identified in contexts familiar to NHMRC.

A researcher participating in the review of his own proposal, either for funding or ethical approval is a clear example. The researcher stands to receive money or advancement if the decision is made in his favour. His personal

interest conflicts with his role as a disinterested expert committee member in which he has an obligation to bring his expertise to bear so that the goal of the review, to identify the most deserving projects, is achieved.

A member of a committee deciding on the allocation of funding among institutions of one of which she is the CEO is another example. Here, the committee member's institution stands to benefit (and she may also benefit from her employer's gratitude). Fulfilling her duty to her employer conflicts with her role as a disinterested but experienced committee member in which she is obliged to contribute her expertise so that the best qualified institution is funded.

In both scenarios, individuals are engaged in an enterprise that has goals, have a role in that engagement and have obligations attached to that role. Their personal interest or external duty conflicts with those obligations.

What makes the personal or employment matters "interests" is not intrinsic, ie although direct financial gain is the most common "interest",^{vii} it is not the only one that needs identification. A matter is an "interest" because, first, there is a conflict between the prospect of fulfilling it and the responsibilities of the role the person is to play to achieve the goals of the enterprise and second, that conflict distorts that role and so compromises (or at least potentially compromises) the goals of the enterprise. Thus, what is an "interest" is contextual and will vary according to the enterprise, its goals, the obligations attached to the role of the participant and what conflicts with those obligations and compromises those goals.

Defining an "interest" needs to be related to the enterprise, its goals and the role and responsibilities of the participant. In enterprises where goals are non-pecuniary,

such as knowledge or expert professional judgment, the prospect of monetary gain to a participant who is assumed to be pursuing those goals, will almost always be a conflicting interest.

However, any other matter, whether a selfish interest or a competing obligation,^{viii} could also constitute an "interest" because of the effect it could have on that person's fulfilment of her role obligations and in turn on the achievement of the enterprise's goals. It may be clearer to refer to some situations, like that of the institutional CEO, as conflicts of duties than of interests, but it is probably more convenient to use the conventional phrase for both situations.

Conflicts of Interest in Research

Conflicts of interest can, and do, arise in the research context. Conflicts frequently occur between the roles of clinician and scientist in a biomedical context. The obligations of a researcher to answer a question, to clarify mechanisms or to understand a process may be at odds with the researcher's engagement with the primary interest of a sponsor in achieving financial gain, or the interest of the researcher in achieving personal success or recognition. The need to address these is said to be a national and urgent priority,^{ix} following the wide attention given to these issues in the United States.^x

Academic supervisors of student research projects may also face conflicts of interests between the needs of students to complete their project to a required timetable and the interests of potential research participants, and the general community, in ensuring that all research involving humans is ethically conducted.

It may be, for example, that increasing economic pressures from government

have intensified conflict situations within research practice. The intensification of an entrepreneurial spirit within the biomedical research environment may well increase the gap between professional and personal interests of practitioners. Similarly, reductions in funding for research and universities may distort the choices researchers make and, contrary to the wider public interest, researchers may favour projects that deliver immediate economic returns rather than new basic insights that will foster future innovative work.

In all of these examples, the interest can, it is suggested, be identified by reference to the person's role obligations and the institution's goals.

Conflicts of Interest in Ethics

Where a committee's role is to provide advice or make decisions on ethical matters, similar distinctions need to be made. A member who stands to gain financially from a certain decision distorts his role if that potential is not disclosed and he is not excluded from the decision. The financial interest is not relevant to the ethical decision to be made. However, where a member considers that a decision should not be made because it may offend a cultural group or a humanistic or religious value, she is bringing to the issue relevant matters and exercising judgement.

An exploration of the meaning, and sources of that meaning, of the expression "ethics" measures the scope of what is relevant to an ethical determination. That exploration will include not only the ethical judgements that individuals make, but the principles on which they are based and the values that underlie those principles. All of those matters would be relevant to a determination of an ethical issue and reliance on any of them by a contributor to that determination should not be considered a distortion of their role

because none of these matters constitute a conflict of interest in the sense explained above. Personal ethical positions and values are not irrelevant considerations to the task at hand. Rather, they are the reasons for what may be strenuously defended differences of ethical opinion as to how the determination is to be made.

Categories of membership of a body such as AHEC mark out domains of knowledge and value that are communally agreed to make a proper contribution to the shaping of ethical judgment and opinion, e.g. religious institutions, the disability community, philosophical orientation, etc. Those categories reflect a shared understanding that membership of such a domain does not constitute a conflict of interest.

Thus, the goals of the enterprise that is AHEC extend to a broad and inclusive conception of ethics. They imply that the role of members is to bring all of their expertise and experience to bear in discussion and decision: it is all relevant to the achievement of AHEC's goals.

This limiting of the scope of the concept of 'conflict of interest' does not contradict the importance of a shared appreciation, by all those party to thinking and deciding about ethical matters, of 'where others are coming from'. Complete openness about that is important not only when there is a risk of distorted judgment or dubious motives otherwise remaining hidden. It is always valuable, because it helps all participants in discussion better to understand and appreciate the content and weight of others' views. Accordingly, open discussion will be promoted by early disclosure of 'where all are coming from'.

Conflicts of Interest and HRECs

HRECs play a key role in assessing and clarifying conflicts of interest in the research setting and in limiting any possible adverse consequences. An ethics committee may need to ask a few fundamental questions about the nature, funding and institutional structures involved in the research project in order to develop procedures for dealing with the most common conflicts. For example, it is important to ask whether a particular research proposal has a primary commercial purpose, or seeks to answer genuine research questions. It is also important to ask whether the combined roles of clinician and scientist are likely to influence either the appropriate treatment of patients or the ethical conduct of the project, and whether sponsorship from industry will limit scientific communication in order to protect proprietary information. When the committee is discussing a project, members with personal interests in, or personally affected by, eg involvement in competing research, the study should absent themselves. On occasion, it may be necessary to seek specific advice from disinterested parties.

Procedures for Declaration of Conflicts of Interest and Minimisation of Their Effect

No member of a committee should adjudicate on an issue in which he or she has any conflict of interest, including any personal involvement or participation, financial interest in the outcome, involvement in competing activity to that under consideration.

When a committee member has a conflict of interest in relation to a matter under review, or could be seen to have a conflict of interest, that member should withdraw from the meeting. The absence of the member concerned should be recorded in the minutes. In addition, a committee member in this situation should refrain from discussing the project with other committee members, or attempting to influence the committee in any way.^{xi}

FOOTNOTES

* I am grateful to Dr Chris Cordner for his insightful comments on an earlier version of this paper and to other members of the Australian Health Ethics Committee for their suggestions

i E.L. Erde, "Conflicts of interest in medicine: a philosophical and ethical morphology", in R.G. Speece, D.S Shimm and A.E. Buchanan (eds), *Conflicts of Interest in Clinical Practice and Research*, New York, Oxford University Press, 1996, pp. 12-41

ii Resnik, D Conflicts of interest in science *Perspectives on Science* 6.4 (1998) 381-408 at 387

iii Resnik, op.cit. n2 at 388

iv The view that judgement can be so described may be doubted.

v Resnik, op.cit. n3 at 388

vi It is the institutional focus that is seen to be important in Australia, see M. Van Der Weyden Confronting conflict of interest in research organisations: time for national action *Medical Journal of Australia* 175: 396-397 (2001)

vii Even in bioethics consultancy, see Baruch Brody, Nancy Dubler, Jeff Blustein, Arthur Caplan, Jeffrey Kahn, Nancy Kass, Bernard Lo, Jonathan Moreno, Jeremy Sugarman and Laurie Zoloth, "Bioethics Consultation in the Private Sector, *Hastings Center Report* 32 no. 3 (2002) 14-20

viii Resnik refers to these as "competing commitments", op.cit n 2 at 393-4

ix Van der Weyden, op.cit, n.5

x C D DeAngelis Conflict of Interest and the Public Trust *The Journal of the American Medical Association* v 284 p 2237. The volume contains a collection of relevant accounts.

^{xi} http://www.nhmrc.gov.au/health_ethics/hrecs/_files/Clarifying_Conflicts_of_Interest.pdf

Footnotes from page 10 continued

^{xvi} The agent's perspective also contrasts with the related perspective of the subject as an arbitrary chooser, free to make and remake human nature as they will.

^{xvii} This article is based on a more extensive essay, "Are People More Important than their Bodies", in *The Australasian Catholic Record* (2009), where full references are to be found. That essay was the basis for a lecture celebrating the 10th Anniversary of the Nathaniel Centre (Wellington, NZ). Substantial parts of this article also appear in an extract from the lecture in the *Nathaniel Centre Report* April, 2009. I thank the Nathaniel Centre for suggesting the topic my lecture.

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