

POLITICAL ECONOMY AND ETHIC OF CARE: TOWARD A
UNIFIED THEORY OF UTILIZATION OF ASSISTED
REPRODUCTIVE TECHNOLOGIES

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ABSTRACT

Any ethical argument involving the problems of access to assisted reproductive technologies (ARTs) should entail the discussion of the decision protocol and consider the individual deliberating on the appropriateness of these remedies from the point of view of self and community. Yet, arguments based on patients' own moral calculations are rare in the bioethics literature. The moral voice behind most discourses concerning ARTs is that of an outwardly independent spectator, who nonetheless proceeds to justify a personally significant worldview in the utilization of these resources. Investigators grounded in social and legal sciences have offered relevant arguments in this regard, but because their discourses are derived from research protocols specific to their respective disciplines, they fail to provide a general rationale applicable to moral deliberation.

Fortunately, it is possible to bring two seemingly incongruous discourses, one from ethics and the other from economics, under the rubric of a more general model of utilization of ARTs. Specifically, the basic principles of a certain economic perspective, political economy, appear largely reconcilable with those of a particular ethical perspective, ethic of care. This ethical perspective is based on the premise that healthcare givers, simultaneously cognizant of the larger decisional environment as well as the contingencies specific to the immediate client-agent interaction, are sympathetic and responsive to their patients' unique needs. This moral precept finds a direct reflection in a contemporary strand of

political economy represented by Richard Posner, Amitai Etzioni, Harold Hochman, and Amartya Sen.

The objective of this work is to blend the political economic perspective with that of an ethic of care by means of a patient-oriented model of demand for ARTs. The political economic paradigm of subjective valuation, substantially enhanced with the key elements provided by ethic of care, will offer an operational framework within which the preferences of seekers of ARTs can be analyzed in more satisfactory terms. The integration of the two perspectives requires the surmounting of a series of methodological hurdles, but the effort will be worthwhile. For, the model of choice will be conducive to an equilibrium that is not only efficient, but also equitable.

RÉSUMÉ

Tout argument éthique entourant l'accès aux technologies de reproduction assistée devrait occasionner une discussion sur le protocole décisionnel et devrait prendre en considération l'individu qui réfléchit sur la justesse de ces remèdes, son point de vue et celui de la communauté. Mais les arguments basés sur le calcul moral des patients sont rares dans la littérature bioéthique. La voix morale derrière la plupart des discours qui traitent des technologies de reproduction assistée est celle d'un spectateur externe et indépendant en apparence, qui néanmoins procède à la justification d'une perspective très personnelle de l'utilisation de ces ressources. Les chercheurs en sciences légales et sociales offrent des arguments pertinents en ce regard, mais parce que leurs discussions sont dérivées de protocoles de recherche propres à leurs disciplines spécifiques, ils n'ont pas réussi à établir une logique générale applicable à la délibération morale.

Heureusement, il est possible de regrouper deux discours apparemment incongrus, un dérivé d'éthique et l'autre d'économie, sous la rubrique d'un modèle d'utilisation des technologies de reproduction assistée plus généralisé. Spécifiquement, les principes de base d'une perspective économique particulière, l'économie politique, peuvent être réconciliés avec ceux de l'éthique des soins. L'éthique des soins est basée sur le postulat que les professionnels de la santé qui, ayant simultanément connaissance de l'environnement décisionnel ainsi que des

contingences spécifiques à l'interaction immédiate entre l'agent et le client, devraient être plus compatissants et réactifs aux besoins spécifiques des patients. Ce précepte moral est reflété dans un courant d'économie politique représenté par Richard Posner, Amitai Etzioni, Harold Hochman, et Amartya Sen.

L'objectif de cet ouvrage est de fusionner la perspective d'économie politique avec l'éthique des soins par le biais d'un modèle de demande de technologies de reproduction assistée, orienté vers le patient et ses besoins. Le paradigme d'économie politique de valorisation subjective, enrichi substantivement d'éléments-clé de l'éthique des soins, offrira un cadre opérationnel à l'intérieur duquel les besoins de ceux qui demandent les technologies de reproduction assistée pourront être analysés de façon satisfaisante. L'intégration de ces deux perspectives ne sera pas sans obstacles, mais l'effort en vaudra la peine puisque ce modèle sera propice à un équilibre non seulement efficace, mais aussi équitable.

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science. It was during these discussions that I first discerned the interface between biomedical ethics and political economy.

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INTRODUCTION

In the last twenty years the medical community has witnessed an explosion of assisted reproductive technologies (ARTs), which range in complexity from the mundane, such as artificial insemination by donor sperm (AID), to the exotic, such as in vitro maturation of oocytes (IVM). These treatments are not inherently benign. In the utilization of any novel medical intervention risks can and do arise, and ARTs have proven no different. A telling example relates to the high frequency of twin and higher order pregnancies associated with in vitro fertilization (IVF), which carry much greater risk to the mother and the developing fetuses as compared to typical singleton pregnancies. In addition, ARTs have contributed to unprecedented diseases, such as the highly pernicious ovarian hyperstimulation syndrome. The new methods of screening, diagnosis, and testing that are ancillary to ARTs have spurred deliberations in their own right, which revolve around such emotionally and ethically charged issues as patient autonomy, selective pregnancies, and “wasted” embryos.

The proliferation of ARTs and concomitant interventions has had an impact not only on medicine and law, but also on social, behavioral, and moral sciences. This has occurred because problems relating to the access to and use of these techniques compel members of society to interpret and reinterpret what it means to be a parent, a domestic partner, a child, indeed, a human being.

Bioethicists naturally have turned their attention to the problems specific to ARTs and have developed a sizeable body of work in the field.

The distinguishing feature of this discourse is that it is for the express consumption of healthcare professionals, legal scholars, policy makers, and fellow bioethicists. In the process, the point of view of the main character of this drama is often trivialized, with a host of attendant questions remaining unanswered. What are the patient's and her partner's pre-treatment goals and expectations? What are their concerns about multiple gestation and non-implanted embryos? What are their attitudes towards policies about egg sharing, payments to egg donors, sperm donor anonymity? What are the rights of HIV-positive couples, prospective mothers of advanced age, lesbian couples seeking ARTs? How do infertile couples who utilize novel treatment modalities view their dual roles as patient and research subject? What is their understanding of informed consent in this context, and is it different from that which is normally understood in the medical and bioethical community? These and many additional related concerns directly impinge upon the moral deliberations on the part of the seekers of ARTs, hence should be addressed in any ethical argument involving these interventions. Yet, the moral voice behind most discourses concerning ARTs is that of an outwardly independent spectator, who, all the same, applies a personally significant worldview to determine the appropriateness of these remedies from the point of view of self, family, and society.

This perspective flies in the face of the warning made over a century and half ago that it would be a “mischievous absurdity” to evaluate other individuals’ actions by our own standards, that is, to judge human deeds “from the *outside* as they look to us, instead of from the *inside* as they look to the actors ... as though the doers of them had the same desires, hopes, fears, and restraints as ourselves.”¹ The warning is compelling even in those cases in which the spectator deems all members of the community equally valuable and develops and applies an impartial and transparent moral calculus. For, the underlying premise of the accompanying argument will still be that individuals either have no moral standings of their own, or, if they do, theirs should be subjugated to the worldview espoused by the observer. In view of this eventuality, no vicarious moral argument, even that of the most circumspect of commentators, can hope to shed full light on the multidimensional evaluative process that actually unfolds in the minds of individuals finding themselves in a given decisional situation—in this case deliberating on the appropriateness ARTs in meeting personal as well as social objectives.

To make the moral calculus pertaining to this process of deliberation informative, researchers should apply themselves to descriptive programs of inquiry, that is, examine more closely how individual seekers of ARTs actually form their preferences, turn these choices into action, and deal with the consequences. A cursory glance at this decisional path reveals an exploratory,

¹H. Spencer, *Social Statics: The Conditions Essential to Human Happiness Specified, and the First of Them Developed*, New York: Robert Schalkenbach Foundation ([1850]1995: Ch. XX, §7:205). Emphases in the original.

tentative, self-educating, and performance-enhancing process of choice rather than the abstract, impersonal, and mechanical ones flooding bioethical literature. A good measure of objectivity and deduction is certainly noted in the patient-driven process of choice concerning ARTs; however, the tell-tale signs of heuristic decision-making come more conspicuously into sight. Indeed, the personal values, beliefs, and cognitive abilities of the seekers of ARTs emerge as prime movers in this deliberation, although bounded by the attendant economic, legal, and social imperatives.

That some fundamental social values centrally figure in individual deliberations concerning ARTs has blurred the demarcation between private action and social action, leading most bioethicists to envision personal decisions concerning ARTs as the property of society as a whole. The confusion is specific neither to ARTs nor to bioethics. In economic science, too, where individual valuation is held paramount, one comes across many an author who express the conviction that all private acts, even those that are patently so—for instance selling and buying a piece of personal property—are only at a superficial level actions involving only two people. For, the transaction would transpire under the auspices of a whole series of social institutions; and under different institutions the two people would have different degrees of control over their private possessions.² Yet, by and large, the methodological platform economists base

²K. J. Arrow, “Values and collective decision-making,” in F. Hahn and M. Hollis (eds.), *Philosophy and Economic Theory*, Oxford and New York: Oxford University Press (1979:114). The root of this thinking goes back to the political economic notion of *Konjunktur* developed by Adolf Wagner. According to Wagner, by *Konjunktur* we should

their analyses still rests upon the premise that economic inquiry is *wertfrei* in the Weberian sense, *i.e.*, the values that are taken into account are solely those of individuals, and the question whether these valuations are intrinsically valuable is deemed entirely irrelevant.³

Fortunately, it is not impossible to develop an operational framework that accommodates the key elements of the two opposing economic perspectives. But this move necessitates a crucial change in the core assumptions of the standard model of private choice, namely the casting of personal and social imperatives as two spheres of contingencies simultaneously impinging upon individuals' choice-making protocols. In this two-sided decisional environment, system-generated imperatives would figure not as inhibitors, but as equilibrators of personal aspirations, or better, as normative standards against which to measure the appropriateness of an action from the point of view of self and society. The concepts of rationality and self-interest would be an integral part of this calculus; but they would be formulated in procedural terms rather than substantive, that is, they would provide the ground rules of economic action, but would not constitute its goal. The new model of economic choice would hence transcend the purposely

“understand the sum total of the technical, economic, social, and legal conditions, which, in a mode of social life, ... determine the demand for and supply of goods, and therefore their exchange value, ... independent of the will of the owner (*Grundlegung der politischen ökonomie*, Leipzig: Carl Winter [1892:387]). The excerpt is also in Alfred Marshall's *Principles of Economics*, London: Macmillan (1890), reprinted by Macmillan for the Royal Economic Society (1961:125n).

³L. Robbins, *An Essay on the Nature and Significance of Economic Science*, London: Macmillan (1935), reprinted in F. Hahn and M. Hollis (eds.), *Philosophy and Economic Theory*, Oxford and New York: Oxford University Press (1979:42). Emphasis in the original.

unrealistic decisional parameters of the economic model of human choice while preserving its valuable problem-solving characteristic.

The new *modus operandi* would aptly lend itself to the analysis of patients' behavior concerning ARTs, which appears particularly amenable to system-related imperatives. The new method of inquiry would no longer allow an investigator subscribing to a particular moral stand to make summary judgments about the appropriateness of ARTs from the perspective of the community without referring to the subjective valuations of the seekers of these remedies. Put differently, research on ARTs would rest on a more realistic methodological foundation, which would lead to a more descriptive theory of access and utilization of reproductive technologies. Accordingly, the revamped investigative protocol will be wholly warranted on epistemological grounds, as it will duly comply with the twin goals of scientific investigation: it will be directed to both predict the outcomes and explain the nature of a class of phenomena that deeply affect our lives. It is the express purpose of this investigation to delineate how this methodological transformation could be achieved and how the resulting analytical context could be conducive to generating efficient *and* equitable solutions to problems specific to ARTs.

A measure of willingness to reconcile some key concepts of ethics and economics concerning the provision of healthcare is observed in some relevant

works.⁴ This attitude stems from both disciplines, some economists formulating normative arguments about the provision of healthcare and some ethicists dwelling on the issue of efficient allocation of this social good. One perspective that has been proposed in the latter field appears especially appropriate for the purpose of this work. Appearing under the rubric of “ethic of care,” this approach is based on the premise that healthcare givers, simultaneously cognizant of the larger decisional environment as well as the relational contingencies specific to the immediate client-agent interaction, can and must be sympathetic and responsive to their patients’ unique needs. The conventional framework of fiduciary agency resting on the standard economic paradigm of voluntary exchange does not lend itself to this particular interrelation since in this ethic of care perspective healthcare providers are construed as connected/sympathetic agents stressing trust and mutuality rather than independent/self-interested economic actors vying for personal benefits. In the words of one of the developers of an ethic of care, healthcare providers subscribing to this orientation:

see themselves in terms of others, so relationship, rather than seen as voluntary and incidental to self-identity, is central. The problem of interaction is not then conceived of as how to get others to interact with oneself on terms that would be acceptable to all, but how to protect the ties of affection and connection which are central to one’s very self-identity. Moral dilemmas arise over how to preserve these ties when they are threatened, and these

⁴See Royal Commission on New Reproductive Technologies Report, *Proceed with Care: Final Report of the Royal Commission on New Reproductive Technologies*, Minister of Government Services Canada (1993) and President’s Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, *Securing Access to Health Care: A Report of the Ethical Implications of Differences in the Availability of Health Services*, Washington, DC (1993).

dilemmas are mediated by the voice of care. Since the primary [concern] is of separation and abandonment, a strong value is placed on community and relationships.⁵

Rita Manning holds that an ethic of care encompasses five basic principles: *moral attention* to others' needs and concerns; *sympathizing* and even identifying with the persons in the situation; *awareness* of interpersonal relations and concern for their maintenance; *accommodation* of others' needs and priorities; and, generating an *appropriate response* for these exigencies. Another proponent of an ethic of care, Joan Tronto, meanwhile, identifies four ethical dimensions of care—*attentiveness*, *responsibility*, *competence*, and *responsiveness*—integrated into a coherent, balanced whole.⁶ These guidelines directly emanate from four elements of the paradigm of care, which include *caring about* (*i.e.*, noticing the care in the first place); *taking care of* (*i.e.*, assuming responsibility for care); *care-giving* (*i.e.*, the actual work of care that needs to be done); and, *care-receiving* (*i.e.*, the response of that which is cared for to the care.)⁷

Minor taxonomic and terminological differences between the views of Manning and Tronto aside, the main thrust of an ethic of care is that it intimates

⁵R. C. Manning, "A care approach," in H. Kuhse and P. Singer (eds.), *A Companion to Bioethics*, Oxford: Blackwell Publishers (2001:102).

⁶J. C. Tronto, *Moral Boundaries: A Political Argument for an Ethic of Care*, New York: Routledge. (1993:127-137).

⁷Tronto (1993:137).

what makes a person a morally good person and a society a morally admirable society. To become a morally good person, the individual should strive to meet the demands of caring that he or she encounters in his or her life, and to be a morally admirable society, the community must adequately provide for care of all its members.⁸ As such, regardless in what way it is presented, an ethic of care emerges as a moral orientation that is sorely needed in our increasingly fractured society, one that affords guidance about how to live our lives as caring individuals and, when necessary, how to restructure our institutions to make it possible to do so.⁹ This ethical orientation necessarily opens an interface with politics, as it presupposes a legal covenant that is based on the principles of justice and democracy, under whose provisions the members of the community freely and fully address and proceed toward correcting their problems.¹⁰

This conclusion about the interface between ethic of care and political science has direct relevance upon the main argument presented in this investigation, as it points out that no coherent ethical argument involving the problems of access to ARTs can be formulated without involving a discussion of attendant political, social, and legal imperatives. Fortunately, there are no epistemological impediments against developing integrated theories provided that the resulting product has been formulated in a coherent, consistent, impartial, stringent, and logical manner. In fact, properly constructed integrated theories

⁸Tronto (1993:126).

⁹Manning (2001:105).

¹⁰Tronto (1993:155).

may shed an even better light on complex facets of our existence than stylized theories, since the latter are constructed to verify the goodness of fit of a given phenomenon to a given set of premises while the former aim at verifying the opposite.

Considering the inevitable involvement of public values in private moral deliberations revolving around such an archetypal social good as healthcare, it is puzzling that social scientists have kept their distance from ethical arguments concerning ARTs. The lack of interest on the part of economists is especially baffling since the standard framework of economic exchange should have seemed to these scientists eminently suitable to the treatment of the exchange relationship that takes place between consumers (seekers) and suppliers (providers) of this particular commodity (ARTs). One conceivable explanation for the omission would be that economics and ethics have embarked upon two irreconcilable investigative paths since late nineteenth century when economics began to judge individual conduct exclusively against the principle of efficiency while ethics stuck with its search for the principles that would generate more equitable arrangements of rights and statuses.

However the explanation goes only so far, since a firm common ground does exist between bioethics and at least one special subspecialty of economic scholarship, Public Economics, exclusively devoted to the valuation and provision of social goods, which encompasses healthcare. The overarching assumption of

Public Economics is that social goods could not be withheld from any member of the community due to their three defining characteristics: non-divisibility, non-rivalry, and non-excludability.¹¹ Healthcare figures eminently among social goods and this coincidence should have led public economists and bioethicists to a close cooperation. But even omitting Public Economics, and referring only to the very core of economic science, price theory, one would have expected a closer collaboration between the two spheres of scholarship in the face of the observation that the two trademark axioms of economic science, rationality and self-interest, have been relaxed in the works of quite a few economists. In fact, some highly placed economic theorists, including Dennis Mueller, Richard Thaler, Amos Tversky, and the 2002 Nobel Laureate David Kahneman, have long exhorted fellow practitioners to break away from the stifling axiomatic boundaries of their science and import insights from other social sciences.¹² These authors

¹¹R. A. Musgrave and P. B. Musgrave, *Public Finance in Theory and Practice*, New York: McGraw-Hill ([1973]1984:233) elaborate these characteristics. To transpose these characteristics into a healthcare context, a public good is indivisible in the sense that the utility emanating from it comes in a whole package, which benefit cannot be divided in smaller units and be ascribed to each person (*i.e.*, *A* who lives near a hospital and perceives 100 units of utility cannot be charged a higher fee versus *B*, who lives far away and thus perceives a utility of only 50). The second condition refers to non-rivalry, which stresses the fact that *A* and *B* must pay the same fee because the hospital can accommodate the needs of both *A* and *B*, unless at one point it becomes overcrowded. Third, the public authority cannot exempt *A* from paying any hospital fees by excluding him or her from ever the using to the hospital. Such a proscription challenges not only any concept of morality, but is also not enforceable on purely practical grounds, since the hospital simply cannot debar *A* from using its services.

¹²See D. Mueller, "Rational egoism versus adaptive egoism as fundamental postulate for a descriptive theory of human behavior," *Public Choice* 51 (1986:3-23); R. Thaler, "Toward a positive theory of consumer choice," *Journal of Economic Behavior and Organization* 1 (1981:39-60); D. Kahneman and A. Tversky, "Prospect theory: An analysis of decision under risk," *Econometrica* 47 (1979:262-291); and A. Tversky and D. Kahneman, "Judgment under uncertainty: Heuristics and biases," *Science* 185 (1974:1124-1131).

admonish their hidebound colleagues for having clung to an overly abstracted conception of human conduct for so long, missing, in the process, the readily observed reality that individuals are strongly influenced by historical, ideological, cultural, cognitive, and ethical imperatives when they make seemingly rational and self-interested choices. Investigators subscribing to this orientation are referred to as Behavioral Economists, evidently because they consider economic agents not as utility maximizing automatons, but as human beings in the flesh, who pursue predetermined goals in a natural decision environment.

Efforts to bring economics to a close association with another sister field of scholarship, political science, actually preceded those of Mueller, Thaler, Kahneman, and Tversky. In fact, a quarter of a century earlier, some scholars trained in conventional economics, starting with Kenneth Arrow and followed by Duncan Black, Anthony Downs, James Buchanan, and John Head,¹³ considered the economy and the polity as the two interrelated parts of one larger decision environment where agents rationally proceed to attain outcomes directed to accomplish private as well as public ends. The new perspective was characterized by a resolve to return to the original notion of Economic Man elaborated by the political economists of the classical period, especially Adam Smith, Herbert

¹³See K. Arrow, *Social Choice and Individual Values*, New York: John Wiley (1951); D. Black, *The Theory of Committees and Elections*, Cambridge: Cambridge University Press (1958); A. Downs, "An economic theory of political action in a democracy," *Journal of Political Economy* 65 (1957:135-150); J. Buchanan, *Public Finance in Democratic Process*, Chapel Hill, North Carolina: University of North Carolina Press (1967); and, J. J. Head, *Public Goods and Public Welfare*, Durham, North Carolina: Duke University Press (1974).

Spencer, and J. S. Mill, in whose writings this model of Man was represented as a community-minded egoist motivated to improve his lot within the context of existing social institutions.¹⁴ In these writings, Economic Man emerged as a *socius*, who takes action always with an eye to the judgment of his fellows, with whom he coexists in a society built on moral foundations.¹⁵ As such, classical political economists rested ethical and economic concerns on the same conceptual platform, with justice emerging as the primary virtue, governing several lesser ones, including self-interest, which occupied the last place in the spectrum of moral sentiments.¹⁶ These authors inherited their unified theories from earlier moral philosophers, starting with Hugo Grotius, who, in *De jure belli ac pacis* (1625), envisioned the world as a realm ruled by a moral law of nature, which is beyond force and egoism and wholly accessible to reason. According to this great jurist, philologist, theologian, and historian, human relations could not be in variance of the tutelage of morality, for they otherwise would be in violation of

¹⁴The full title of Adam Smith's 1759 work is telling evidence of the orientation of the father of public economy concerning *homo oeconomicus*: *The Theory of Moral Sentiments; or An Essay Towards an Analysis of the Principles by which Men Naturally Judge Concerning the Conduct and Character, First of Their Neighbours, and Afterwards of Themselves*.

¹⁵D. Bell, "Models and reality in economic discourse," in D. Bell and I. Kristol (eds.), *The Crisis in Economic Theory*, New York: Basic Books/Harper (1981:54n).

¹⁶According to Smith, the virtue of prudence—*i.e.*, self-interest—would be the motivating factor only under those conditions in which it does not clash with other, higher virtues. The highest status among virtues was reserved for justice, the prime concern of contemporary moral philosophers. In fact, Smith, in his classification of different sources of moral sentiments, wrote in *The Theory of Moral Sentiments*, "we feel ourselves to be under a stricter obligation to act according to justice, than agreeably to friendship, charity, or generosity, [as] the practice of these last-mentioned virtues seems to be left to some measure to our own choice, [as], somehow or other, we feel ourselves to be in a peculiar manner tied, bound, and obliged to the observation of justice" (1966[1759]:114).

the overriding goal of human existence, which consists of leading a life of peace. Grotius's idea was picked up and corroborated by Dr. Cumberland, Baron Puffendorf, and Lord Shaftesbury, who commented on the natural human propensity to direct their reasoning ability to publicly useful actions, regardless of their egoistic dispositions. The common denominator of these writings is that even those human beings who are totally deprived of "inward consciousness of the pleasure of kind affections, self approbation, and the torments of malice, or hatred, or envy, or anger" would still be excited, thanks to their God-given intellect and self-love, by "publicly useful actions, and [be] dissuade[d] from the contrary."¹⁷

The felicitous spectacle of human community based on a sentiment of peace and serenity came under serious attack from Thomas Hobbes, who attributed the root of morality not to the rationality, but to the self-interestedness of the individuals comprising society. He observed in the actions of the individual members of the community the reflection of insatiable and unflinching desires to promote their own interests, which tendency causes interminable conflict both with their cohorts individually and with society in general. Hobbes found "in the nature of man ... three principal causes for quarrel: first, competition; secondly, diffidence; thirdly, glory,"¹⁸ which persist under all circumstances. In the course of his analysis, Hobbes rested egoism on a strictly psychological foundation, thus

¹⁷F. Hutcheson, *Illustrations on the Moral Sense*, B. Peach (ed.), Cambridge, MA: The Belknap Press of Harvard University Press ([1728]1971:160).

¹⁸*Leviathan* (1651), passage reprinted in W. Ebenstein (ed.), *Great Political Thinkers: Plato to the Present*, New York: Holt, Rinehart and Winston (1961:367).

contributing to the development of the hedonistic theory of utilitarianism subsequently elaborated by Bentham. Bernard de Mandeville, another adherent of Hobbes' theory, advanced a more placid argument. According to Mandeville, we ought to hail individual selfishness as the basis of material civilization and prosperity, since it so happens that what propels humans to prosperous and comfortable outcomes is not "heavenly" rationality, but the "base" sentiment of selfishness. Indeed, according to Mandeville, were individual members of society to practice the virtues promoted by church and government, their actions would lead to nothing but poverty and misfortune, an outcome that would be at odds with what is being preached from lecterns and daises. Mandeville's conception of self-interest as a "beneficial vice" paved the road to Utilitarianism more effectively than Hobbes' unsettling view of *homo homini lupus*. Mandeville's subdued utilitarian view also set the stage for the establishment of the notion of *laissez faire* as the political foundation of the economic act, an idea that was consummated by Adam Smith half a century later. But before embarking on Smith's contribution to the history of ideas, a brief discussion of Francis Hutcheson's concept of moral sense seems in order.

Hutcheson succeeded in forming a common ground between the older theological/rationalistic views of Grotius, Cumberland, Puffendorf, and Shaftesbury and the contemporary psychological/egoistic theories of Hobbes and Mandeville. In *Inquiry into the Original of Our Ideas of Beauty and Virtue* (1725), *Inquiry Concerning Good and Evil* (1726), and *Illustration on the Moral*

Sense (1728), Hutcheson directly addressed the epistemology of morals, asking: “What are the respective roles played by reason, sense, or emotion in moral judgments? What gives moral concepts their significance? Is there a fundamental principle of ethics? If so, what is the basis of its ultimacy, and how is this to be recognized?”¹⁹ Hutcheson presented powerful arguments to counteract both the rationalist and the egoist views evoked by British and Continental moral philosophers, and proceeded to replace them with his own theory based on the concept of moral sense and sentiments. As for moral sense, he saw human beings as creatures endowed with an innate consciousness to promote a series of disinterested motives (*i.e.*, to act for the sake of the good of others and not just for their own advantage) and to make disinterested practical judgments (*i.e.*, to think an action good for reasons other than its serving their own advantage).²⁰ The basis of this moral sense is the satisfying feeling of garnering the approval of one’s cohorts. Hutcheson judged moral sense a propelling factor in the attainment of collective utility and recognized the efficacy of utilitarian calculus in the measurement of its consequences. For, virtue, a moral beauty contributing to the happiness of others, would be approved more widely by society if it benefited a wider segment of it, such that the virtue that produced the greatest happiness for the greatest number would be deemed most admirable. Hutcheson is not impervious to the fact that great moral diversity is observed in the deeds of different individuals, but he attributes this disparity to differences of opinion

¹⁹B. Peach, “Preface,” in Hutcheson ([1728]1971:4).

²⁰D. D. Raphael, “Moral sense,” in P. P. Wiener (ed.), *Dictionary of the History of Ideas*, Vol. 3, New York: Charles Scribner’s Sons (1973:231).

about the universal principle of maximum social utility, which result from different moral *sentiments* stemming, in turn, from different individual experiences.

If Hutcheson's influence on contemporary moral philosophers was substantial,²¹ its effect on Adam Smith was paramount. Smith always spoke with much admiration of the profundity and eloquence of the lectures Dr. Hutcheson delivered at Glasgow where he was a student, which observation gives rise to the common belief that Smith's views explicated in his *Theory of Moral Sentiments* (1759) directly stemmed from this estimable professor of moral philosophy.²² Accordingly, the view that Hutcheson's original ideas were extrapolated by Smith to economic theory would constitute a reasonable assumption, very much like the moral philosophic arguments of Hobbes and Mandeville affected Bentham, who, in turn, influenced, Stanley Jevons, F. Y. Edgeworth, and Alfred Marshall, in whose hands the independent science of Economics was born.

Modern economic thinking emerged in the 1870s when marginal calculus was grafted onto the analysis of economic behavior. This achievement allowed the discernment of the costs and benefits attributable to alternative courses of actions in private and in public realms of economic decision-making without

²¹B. Peach, "Preface," in Hutcheson ([1728]1971:3).

²²D. Stewart, "Account of the life and writings of Adam Smith, L.L.D.," in *The Theory of Moral Sentiments*, D. Stewart (ed.), London: Henry G. Bohn (1853:xiii-xiv), reprinted in 1966 Augustus M. Kelly Publishers in New York.

having to evoke any *uber*-individual moral schema. Entrenched in marginal calculation was the assumption that efficient courses of action could be ascertained through a purely instrumental method of inquiry with the investigator remaining wholly outside the traditional context of morality. The title of Edgeworth's groundbreaking 1881 publication inaugurating the birth of Economics fully projects this orientation: *Mathematical Psychics: An Essay of the Application of Mathematics to the Moral Sciences*. Indeed, a few years previously economic science was equipped by Stanley Jevons with a powerful analytical tool, marginal calculus, which transformed political economy into a self-contained scholarly domain, totally separated from jurisprudence, ethics, or any other morally relevant context.²³ The new science adhered to a glaringly utilitarian framework, openly postulating that human beings are independent, self-determining creatures, detached from their family, clan, class, or nation, and acting as the sole judges of their own actions.²⁴ As for the rules that regulate the relations among these isolated individuals, they came to be considered binding only in a rational, not moral, sense, as they were thought to impose no behavioral

²³See S. Jevons, *Theory of Political Economy*, London: Macmillan (1871). Independently of Jevons, two Continental authors, Carl Menger in Vienna and Léon Walras in Lausanne, achieved the same contribution virtually concurrently. See C. Menger, *Grundsätze der Volkswirtschaftslehre*, Vienna: Wilhelm Braumüller (1871) and L. Walras, *Éléments d'économie politique pure*, Lausanne: R. Rouge (1889), reprinted from the lectures Walras had given at University of Lausanne in the mid 1870s.

²⁴D. Bell (1981:47-48).

limits in the achievement of predetermined goals except that individuals adhere to the overarching principle of utility maximization.²⁵

The divorce between economics and ethics was not instantaneous. In fact, at the very height of the marginalist revolution a unified theory of economics and ethics was proposed by Henry Sidgwick. He showed in *Methods of Ethics* (1874), followed by *The Principles of Political Economy* (1883), that individual utility would contribute to collective utility as a result of a propitious confluence of two different human propensities, morality and self interest. He pointed out that Smith's Egoism and Bentham's Utilitarianism were easily reconcilable on the basis of the common observation that even the most egoistic individuals routinely acted in compliance with the principle that "the interest of all is the interest of each."²⁶ This was because the utilitarian calculus worked in a different way that was elaborated by Bentham:

It would seem to follow from [Bentham's] hedonistic calculus that there is no moral difference between a situation in which A benefits (obtains 50 units of pleasure, say) at the expense of B (say

²⁵H. A. Simon, "From substantive to procedural rationality," in S. Latsis (ed.), *Method and Appraisal in Economics*, Cambridge: University of Cambridge Press, reprinted in F. and M. Hollis (eds.), *Philosophy and Economic Theory*, Oxford and New York: Oxford University Press (1979:67).

²⁶D. Bell (1981:48). Similarly Marshall, who heralded the birth of economics from the ashes of political economy, held that "the Laws of Economics are statements of tendencies expressed in the indicative mood, and not ethical precepts in the imperative. Economic laws and reasonings in fact are merely a part of the material which Conscience and Common-sense have to turn to account in solving practical problems, and in laying down rules which may be a guide in life. But ethical forces are among those which the economist has to take account" (*Principles of Economics*, London: Macmillan 1890[1961]:v-vi).

40 units of pain) and one in which A and B both obtain moderate benefits (say 5 units each). The total increase in human happiness (10 units) is the same whichever we choose. To meet this objection Sidgwick modified the greatest happiness formula by making the equal distribution of happiness a requirement as well as its maximization. It would seem to follow that equality, as well as happiness, is a good in itself.²⁷

Sidgwick thus demonstrated that there was an equally, if not more, compelling condition in the attainment of maximum social utility than the invisible hand of self-interest. It was the visible hand of social policy, which exerted its effect not only in the public economy, where the state emerged as the producer of social goods, such as national defense and public health, but also in the private economy, where it assumed the role of the regulator of exchange relationships. Modern political economists of the 1950's and 1960's picked up from there, stressing that there is no such thing as strictly private-economic behavior, as ideologies, political choices, and institutional imperatives play a significant role in the determination of all economic decisions. Accordingly, price theory has been transformed by Arrow, Downs, Buchanan, and Head into a full-fledged politico-social theory, one that embraces all facets of self-interested human action conducive to politically as well as economically tenable equilibriums.

The ethic of care approach appears eminently reconcilable with the strand of modern political economy currently represented by Richard Posner, Amitai

²⁷D. H. Munro, "Utilitarianism," in P. P. Wiener (ed.), *Dictionary of the History of Ideas*, Vol. 4, New York: Charles Scribner's Sons (1973:447).

Etzioni, Harold Hochman, and Amartya Sen. Posner believes a person's goals in life include the wellbeing of his or her cohorts so that their interests become the person's own interest, that is, self-interest becomes indistinguishable from the sensations felt by the person's cohorts.²⁸ Hochman sees sympathy, benevolence, and charity as collective consumption goods, which must be nurtured by public policy.²⁹ Etzioni believes that individuals have an inner moral voice, emanating from the active self, addressing that self, and urging that self to abide by its values and to refrain from behavior that violates the values of others.³⁰ As for Sen, he makes a distinction between sympathy and moralism, explicating that the first emotion is basically egoistic, for when one is oneself pleased at others' pleasure and pained at others' pain, one is basically promoting one's own utility. So, only action based on commitment and solidarity can be non-egoistic, hence moral.³¹ In Sen's own example, "if the knowledge of torture of others makes you sick, it is a case of sympathy; if it does not make you feel personally worse off, but you think it is wrong ... it is a case of commitment ... rather than sympathy, which [is] non-egoistic."³²

²⁸R. A. Posner, *The Economic Analysis of Law*, 2nd edition, Boston: Little, Brown and Co. (1977).

²⁹H. M. Hochman and J. D. Rogers, "Pareto optimal redistribution," *American Economic Review* 59 (1969:542-557).

³⁰A. Etzioni, *The New Golden Rule: Community and Morality in a Democratic Society*, New York: Basic Books (1996:121).

³¹A. Sen, "Rational fools: A critique of the behavioral foundations of economic theory," *Philosophy and Public Affairs* 6 (1977:327).

³²Sen (1977:327).

Each of these thoughts finds a direct reflection in care-oriented ethical discussion. The concept proposed by Posner that an individual's ends include the wellbeing of others is reflected in a key principle of ethic of care, relationship awareness. Rita Manning, a key proponent of the ethic of care approach, writes in this connection: "I see my patient as a fellow fragile human. I recognize that she is in need of my help and that I am able to give it. I recognize my role as a health-care professional and the special obligation this implies."³³ Etzioni's concept of moral voice also emerges in Manning's work, though Manning distinguishes *two* moral voices, The Justice Voice and The Care Voice, which are often in conflict. The first voice says "all persons are equally valuable, hence there are no special obligations to particular others, [and] communities and relationships have no moral standing on their own."³⁴ The Care Voice, conversely, utters: "though all persons are valuable, there are special obligations: those imposed by actual and potential relationships and those imposed by roles; [but] since [this voice] understands communities as more than mere aggregates of individuals, and relationships as more than properties of individual persons, it is committed to saying that communities and relationships [do] have moral standing."³⁵ Thus, Sen's distinction between sympathy and morality reappears within the context of the ethic of care approach, except that Manning employs the term "sympathy" in the same way Sen uses "commitment," *i.e.*, a propensity to elicit non-egoistic

³³Manning (2001:99).

³⁴Manning (2001:101).

³⁵Manning (2001:101).

outcomes, hence a vehicle to attain morality. Hochman's modification of sympathy and benevolence as a "collective good," that is, a commodity that, once produced, can be made available to everybody without depriving anybody, indicates not only the infiniteness and indivisibility of this moral sentiment, but also its amenability to political economic calculus within the Paretian framework of superiority and optimality, hence its applicability for analysis and proposals of alternative measures of health policy.³⁶

SPECIFIC OBJECTIVES. My objective is to blend the ethic of care approach elaborated by Rita Manning, Joan Tronto, and others with the views of Posner, Etzioni, Hochman, and Sen by means of a patient-oriented model of access to ARTs. The political economic component of the integrated perspective will supply the operational framework against which the preferences of the seekers of ARTs can be analyzed within the basic model of voluntary exchange. This decisional environment will simultaneously comply with the essential elements of an ethic of care. The integration will necessitate the surmounting of many methodological hurdles, but the effort will be worthwhile, as the model that will

³⁶Italian social scientist Vilfredo Pareto (1848-1923) developed two criteria, subsequently dubbed Pareto-superiority and Pareto-optimality. He reasoned that because personal utilities cannot be compared interpersonally, the only way one can be sure that a move will increase social welfare is if at least one person is made better off by the move without anybody being made worse off. A measure producing such an outcome would constitute a Pareto-superior move. Pareto-optimality, on the other hand, is achieved when social welfare is maximized, that is, a public policy measure can no longer make someone better off without harming someone else. Accordingly, if a situation has not yet reached Pareto-optimality, a Pareto-superior move would be commendable. But if a situation has already attained Pareto-optimality, no Pareto-superior moves should be attempted. For a full discussion of these concepts, refer to R. G. Holcombe, *Public Sector Economics*, Belmont, California: Wadsworth Publishing Company (1988:35), from which this note is culled.

be developed will demonstrate that it is possible to formulate a model of utilization of ARTs that will lead to an equilibrium that is simultaneously efficient and equitable. The following chapters directly address this task, beginning with a discussion of some special methodological concerns with regard to the exchange relationship involving ARTs, and culminating in a unified model of the demand side of this interrelation. Some discussion of the supply side of the equation will be attempted in subsequent chapters, but a full analysis of this component of the exchange of ARTS will be deferred to a subsequent work, which will present the two sides of the exchange process *pari passu*, within the ambit of a political economic theory of utilization of ARTs which simultaneously complies with the condition of equity.

Chapter 1 introduces two broad methodological approaches to the problem of assisted reproduction, inductive and deductive. The distinguishing characteristic of deductively inspired research agendas is their prescription of optimal courses of action with respect to some universally applicable decision rule. As such, deductive arguments entail definitive solutions for a problem that fit the indicated parameters, along the lines of: “ARTs should be made available only to heterosexual couples who have demonstrated their infertility by not effectuating a pregnancy after one year of unprotected sexual intercourse.”³⁷ Inductive arguments, by contrast, aim to lead to tentative generalizations that intend to explain, summarize, or highlight a specific phenomenon (or a certain

³⁷See L. Speroff *et al.*, *Clinical Gynecologic Endocrinology and Infertility*, Baltimore, Maryland: Lippincott Williams & Wilkins (1999:1013).

aspect of it), such as: “Women using artificial insemination with donor sperm come from all walks of life; some are feminists, others not at all political; and are able to take care of themselves; and they want a child without sex involved.”³⁸ It is discussed in this chapter that, in light of the inherent shortcomings of each methodological perspective, the need has arisen for a more integrative methodological framework concerning ARTs, which simultaneously explains the nature of and indicates solutions to the problems revolving around the access to and provision of ARTs.

Chapter 2 takes a closer look at the deterministic approaches to ARTs. Both the economic and the ethical perspectives applied to ARTs are of this vein, as they both hold that justified moral judgments can be elicited from some initial premises, such as rationality and prudence or, alternatively, sympathy and beneficence. Political economy emerges in this chapter as a promising interface between these two deterministic approaches. Indeed, the fundamental aim of political economy is to provide an equilibrium that is at once efficient from the point of view of individual agents’ preference orderings and equitable from the point of view of the community, however defined.

Chapter 3 delves into the ethic of care approach as a moral perspective that seems reconcilable with a strand of contemporary political economy directed toward socially acceptable outcomes of individual processes of choice. This is

³⁸See G. Corea, *The Mother Machine: Reproductive Technologies from Artificial Insemination to Artificial Wombs*, New York: Harper & Row, Publishers (1986:44-45).

because both political economy and ethic of care eschew algorithmic, vicarious valuations with respect to healthcare and suitably lend themselves to be extended over the entire breadth of issues specific to doctor-patient relationships concerning the utilization of ARTs. The theory of care ethics developed by Carol Gilligan and Nel Noddings, and applied by Joan Tronto and Eva Feder Kittay to political theory and a Rawlsian theory of justice, respectively, appears especially amenable to be melded with political economic theorizing. The more recent contribution of Rita Manning to an ethic of care appears most promising in this respect because of its relatively abstract formulation.

Chapter 4 proposes a unified approach to assisted reproduction. The primary and secondary principles of political economy and care ethics are scrutinized in detail before the two sets are brought together under an integrated framework of utilization of ARTs. The attendant problems of patient autonomy and paternalism are analyzed through the example of preimplantation genetic diagnosis (PGD) as a case in point, concluding that it is within our reach to construct an integrated ethical model of choice involving ARTs by melding not the primary, but some key secondary principles of different ethical theories.

The argument that it is within our reach to construct an integrated ethical model of choice involving ARTs by melding not the primary, but the secondary principles of different ethical theories is further developed in Chapter 5. This ethical construct is now joined to the operational framework offered by political

economy. The chapter culminates in the finding that an ethic of care provides a coherent basis for a unified theory of utilization of ARTs within the parameters of an efficient yet equitable exchange process.

The Concluding Remarks section reiterates that political economy offers a solid operational platform on which the normative concerns of an ethic of care can be fully accommodated. The resulting unified theory of utilization of ARTs will thus overcome the methodological hurdles on the path toward an efficient and equitable equilibrium.

CHAPTER 1

METHODOLOGICAL APPROACHES TO THE PROBLEM OF ASSISTED REPRODUCTION

Most arguments concerning the effect of ARTs on individuals and communities strictly adhere to the research parameters specific to the academic discipline in which the proponents of those arguments are grounded. Some authors concentrate on the economic, social, or ethical impact of procreative technologies while others focus on their anthropological, legal, or psychological effects. One cannot trace a common analytic thread running across the paradigmatic underpinnings of these disparate discourses. This is a disconcerting eventuality, since these arguments often encroach upon each other seemingly without the slightest effort on the part of their originators to question the strictures of their respective sets of received beliefs. To illustrate, two economists in close alignment with the methodological trappings of their discipline, plainly aver that children, “little darlings [that] they may be in their parents’ eyes, are also economic goods ... [as] they can provide considerable benefits to their parents and relatives.”³⁹ Upon this premise, the economists rest a conventional theory of demand and supply of children. In their opinion, this approach adequately explains the nature of production of children and predicts the likely outcomes upon parents and relatives. The two authors then foray into the fields of law, sociology, and moral philosophy to demonstrate that

³⁹G. Tullock and R. B. McKenzie, *The New World of Economics*, Homewood, Illinois: Richard D. Irwin, Inc. (1985:84).

their price-theoretic construct would provide more effective remedies to myriad moral problems challenging society with respect to producing children than those grounded in law, sociology, or ethics.

Economists are wont to flaunt their belief that people can generate efficient solutions to most problems they encounter in societal life once they have successfully externalized these problems, *i.e.*, tackled them from the point of view of rationality and self-interest *vis-à-vis* the applicable constraints. To elaborate this point, Tullock and McKenzie go on to argue that under some circumstances the transplantation of a fetus from the womb of a “true mother” to that of a “host mother” would be a superior alternative to adoption:

Because adoptable babies are becoming very expensive, the mother who would like to bear a child but who cannot because of the sterility of the husband would have some incentive to pay to have an aborted fetus transplanted into herself. This may not sound so crazy if it is remembered that women now pay handsomely for artificial insemination and for the rights to adopt a child. In fact, a public interest group interested in the rights of the fetus' life may be willing to pay another mother to accept the transplant and carry the child to term ... [T]his may be a less-than-ideal solution, but it may be a better solution than one standing around discussing the question of when life begins while many fetuses are being destroyed. In addition, there are possibilities for payment arrangements whereby the true mother and host mother gain by a fetus transplant. Suppose that there is a mother who earns \$20,000 per year, who wants to have a child of her own, but who is not willing to endure the pain and loss of income associated with pregnancy. If there is another woman who earns \$8,000 per year, then the mother can possibly agree through some institution, which is not yet established, to pay a host mother to carry the baby to term at which time the baby would be transferred back to the original mother. If the disability associated with the pregnancy is three months, the real mother could be willing to pay (ignoring

taxes) as much as or more than \$5,000 to the host mother. By making the payment, it will be the host mother who will lose time at work, which will cost her \$2,000. She can receive from the real mother, say, \$4,000, and her income will rise to \$10,000. Furthermore, the total output of the economy can be \$3,000 greater than what it would have been if the real mother had lost time from work.⁴⁰

While most social and behavioral scientists would cringe from the stark calculus inherent in the above excerpt, most economists may see nothing wrong with it. In fact, they would discern in Tullock's and McKenzie's scheme the due corroboration of the dictum established by the father of economic theory, Adam Smith, namely that it is perfectly right to pursue individual interests from a moral standpoint since an outcome that satisfies individual interest only adds to collective interest. As subsequently explicated by Spencer, self-interest and collective interest are perfectly reconcilable considering that Economic Man is so constituted as to identify his own maximum happiness with that of his species. This creature attains his two-pronged objective by (1) pursuing utility only to the extent that his activity does not limit the activities of others (*justice*); (2) avoiding harm to his cohorts (*negative beneficence*); (3) deriving happiness from the happiness of others (*positive beneficence*); and, (4) "perform[ing the] acts required to fill up the measure of ... his own private happiness (*self-interest*) while duly regardful of the preceding limitations."⁴¹ Spencer considered these broad "axioms of scientific morality" to constitute the bases of all policies

⁴⁰Tullock and MacKenzie (1985:99-100).

⁴¹Spencer ([1850]1995:63).

regulating societal life, charging the “practical moralist” with the task of “building a series of [smaller] theorems ... bearing upon our daily conduct.”⁴² Spencer’s exhortation finds an unmistakable reflection in Tullock and McKenzie’s argument excerpted above, in which Spencer’s grand precepts of self-interest, positive beneficence, negative beneficence, and a certain measure of concern for justice all come into plain sight.

Returning to our discussion concerning ARTs within the larger framework of social and moral sciences, sociologists steeped in Durkheim’s teachings concerning common conscience and solidarity would rise to arms against the unadulterated felicific calculus perpetuated in current economic arguments pertaining to utilization of these remedies. In fact, Barbara Rothman, in her assessment of the proliferation of ARTs from a feminist point of view, directly refers to Durkheim when she stresses in no uncertain terms that no utilitarian argument can shed light on any problem affecting a community unless it discusses the *preceding* relationships that have formed the basis of that community.⁴³ Researchers and commentators clinging to utilitarian agenda, according to Rothman, conceive of the community as a mere aggregation of separate, autonomous beings, rather than the interconnected products of the previously established social order.⁴⁴ Authors adhering to Durkheim’s teachings who are

⁴²Spencer ([1850]1995:66).

⁴³B. K. Rothman, “Daddy plants a seed: Personhood under patriarchy,” *Hastings Law Journal* 47(4) (1996:1243).

⁴⁴Rothman (1996:1243). Emphasis in the original.

additionally partial to the feminist argument ascertain in the growing body of liberal literature concerning procreative freedom a concerted utilitarian effort to create the illusion that the disconnected members of a community would perceive no problem in transposing the phenomenon of gestation outside of their bodies into the laboratories or other women's wombs.⁴⁵ Rothman urges her fellow investigators to eschew any such arguments, which condone the prospect that:

... we are moving in the direction of creating a world in which Hobbes will be right; we will spring up like mushrooms. There are already eager scientists actively pursuing the artificial womb, the totally controlled environment in which to grow the "perfect" engineered embryos. But if Hobbes might turn out to be right, so too will Durkheim. Hobbes's world will not work. Without the trust, the social solidarity, the fabric of connectedness, the social order is not possible. The answer offered within the American legal system is not sufficient to protect us in this. More protection of individual rights, more contracts, more informed consent—these are all necessary, but far from sufficient to address the far reaching implications if reproductive technology continues to recreate the world in its own image.⁴⁶

The above passage demonstrates, in its turn, the tendency among the commentators grounded in sociology to throw liberal and utilitarian arguments in the same bin, and then reject not only the economic/utilitarian, but also the legal/ethical paradigm of procreative liberty involving ARTs, such as the one defended by John Robertson, against which Rothman's passage is directed.

⁴⁵Rothman (1996:1247-1248).

⁴⁶Rothman (1996:1248).

Robertson starts his argument with the lament that a parent's right to control their biological destiny through artificial procreative technologies is only tangentially protected by the American constitution. For, though it is true that U.S. laws specifically prohibit the interference of the state with a person's freedom to avoid conception and to terminate pregnancy before term, they do not proceed as forcefully into another aspect of reproduction that begs protection.

That aspect involves:

... the right to become pregnant and to parent, a right that is still ill-defined and in some respects unprotected by the law. Freedom to have sex without reproduction does not guarantee freedom to have reproduction without sex. Full procreative freedom would include both the freedom *not* to reproduce and the freedom *to* reproduce when, with whom, and by what means one chooses. As reproductive and work patterns change, legal recognition of this aspect of procreative freedom may be necessary to permit some women to fit pregnancy and childbirth successfully in their life plans.⁴⁷

At this point Robertson veers into economic territory, explicating, within the conventional framework of price theory, the explicit and implicit costs and benefits perceived by potential users of ARTs and the probable consequences of these valuations on the seekers of these remedies. He notes that the individuals who deliberate on the efficacy of these technologies to meet their ultimate goal of having a child spread their analysis of the concomitant costs and benefits over the entire process of procreation, from conception to delivery. After the initial

⁴⁷J. A. Robertson, "Procreative liberty and the control of conception, pregnancy, and childbirth," *Virginia Law Review* 69 (1983: 406).

assessment, the demand for an ART is either not consummated or culminates in artificial conception. According to Robertson, prospective parents should be free of any legal constraints at the initial phase of the process since potential offspring cannot suffer harm even if the demand is consummated by bringing the sperm and the egg together. Conflicts between the interests of the fetus and those of its mother may arise only *after* the fetus acquires viability, hence only in the next two phases of procreation should state regulation be called for.⁴⁸ The assertion that conflicts between the fetus and its mother may occur in the bearing and birthing phases gives rise to the unsettling eventuality that a woman has an unrestrained right to control her body until the fetus reaches viability and then suddenly loses her autonomy once she decides to carry the child to term—at which point her body may be invaded if the wellbeing of the incipient child is at stake.⁴⁹

I have supplied the above two examples just to make the point that spectators, commentators, or investigators supplying arguments concerning procreation through artificial methods, while closely following their respective paradigmatic agendas, freely encroach upon other investigative spheres in a palpably self-righteous fashion. Economists have been especially cavalier in this transgression, as they boldly transfer their axioms, analytical categories, and

⁴⁸Robertson (1983: 463).

⁴⁹Robertson (1983: 463).

decision rules to other scientific realms in the belief that these tools have universal applicability.⁵⁰

If this belief has validity, the economic discourse should be sufficiently descriptive of actual human behavior concerning choice. In other words, it must be general enough to be applicable to all populations yet descriptive of the specific relationships that affect particular individuals and indicated social segments. Ethical concerns must centrally figure in this generalization, along with relevant economic, demographic, and cognitive variables that simultaneously play a role in the attainment of individually and socially significant goals. In this enlarged decision environment, the social order must be explained neither exclusively from the point of view of common conscience and solidarity (sociology), nor individual rationality and egoism (economics), nor human virtue and morality (ethics). These concerns should be addressed in equal terms despite the emerging epistemological difficulties. The first step toward achieving a tenable reconciliation of these perspectives is to explore each methodological platform upon which social, economic, and ethical, or any other discourses are based. Only after discovering a common ground connecting these platforms can one begin to consider whether the different paradigmatic strictures giving shape to each of the discourses can be reconciled within a single conceptual and operational framework. This prospect necessitates a detailed epistemological analysis, to which endeavor this investigation now turns.

⁵⁰J. Hirshleifer, "The expanding domain of economics," *American Economic Review*, 75(6) (1985:53).

A) INDUCTIVE AND DEDUCTIVE RESEARCH AGENDAS. Taken in broad terms, scientific investigation may subscribe to one of two methods of inquiry. The first, inductive, empirical, or indeterministic, is directed to derive generalized conclusions from specific observations. According to this orientation, knowledge consists of a series of descriptive statements gleaned from perceptual and sensory experiences. Employers of this investigative method are motivated to create new concepts, ideas, or representations or to expand on some existing ones. Though, generally, it is not the aim of these researchers to attain ultimate truth, their investigations may prove quite worthwhile in this regard, if their studies generate a glimmering that enlightens a hitherto obscure facet of greater reality.

Many critics are not impressed, and quickly dismiss the empirico-inductive method as one resting upon a “random collection of individual observations without a unifying concept or focus, rarely [leading] to a generalization or theory.”⁵¹ The judgment is overly hasty and summative. For, empirical observations are neither categorically random nor necessarily unique to the perceptions or sensations of the particular researcher. Though a great deal of subjective valuation is certainly inherent in empirico-inductive arguments, their proponents are characteristically circumscribed by their beliefs. These paradigmatic considerations effectively serve to contain the inventive drift of the argument within limits and steer it toward formal conclusions, hence rendering

⁵¹W. Best, *Research in Education*, Englewood Cliffs, New Jersey: Prentice-Hall (1970:3).

the inductive method a genuine epistemological vehicle, one that may simultaneously explain the nature and predict the consequences of the particular phenomenon under study.

The competing approach, the deductive, axiomatic, or deterministic method, is directed towards eliciting inferences about an experience by comparing its findings against an initially accepted premise. Researchers employing this method of inquiry assume that it is possible, by pure, unaided reasoning, first to conceive and comprehend some overarching features of the universe, and then to deduce from these conceptions a formal description of what the actual, empirical world was like prior to the experiment.⁵² These researchers, convinced that their scientific community perfectly fathoms the world around them, disclose that reality right at the onset and proceed to formulate a decision rule that generates not just a merely adequate, but an ideal outcome corroborating that reality.⁵³ This feature affords the deductive method a tremendous problem-solving capability when confronted with problems that fit the indicated parameters. To illustrate, a physician might choose, on the basis of some valid and reliable diagnostic information, the best course of action for his or her patient, and the patient might get well. The downside to this successful episode from an epistemological point of view is that the connection between the statistically proven premises and the

⁵²G. Gale, *Theory of Science: An Introduction to the History, Logic, and Philosophy of Science*, New York: McGraw-Hill (1979:15).

⁵³T. Kuhn, *The Structure of Scientific Revolutions* (second enlarged edition), Chicago: The University of Chicago Press (1970:19-20).

optimal course of action does not appear of much consequence, since the decision rule was applied entirely mechanically, only to *revalidate* a *preestablished* state of affairs. Put in more general terms, the deductive logic behind that optimal solution served only to justify, but not to expand, the physician's knowledge.

Despite this significant shortcoming, the deterministic orientation has been a staple of "normal" scientific investigation where experiments consist little more than "paradigm articulation" through the testing of a hypothesis against various sets of data through some new and conceivably more elaborate decision rules.⁵⁴ This sort of scientific investigation is not necessarily sterile or unrewarding. There may be a great deal of excitement and attendant fame and status associated with discovering a novel way to solve an old problem and to justify a received belief.⁵⁵ Many of the greatest scientific minds have devoted all their professional attention to tackling demanding paradigmatic puzzles, usually because their fields of specialization offer little else to do, a fact that makes it no less fascinating to the proper sort of scientist.⁵⁶ A forceful case for this scientific outlook was made by Nobel laureate Milton Friedman, who wrote:

⁵⁴Refer to Kuhn (1970:33-42) for a discussion of "normal" scientific investigation and "paradigm articulation." To paraphrase, a normal research problem entails paradigm articulation, that is, the solution of a series of complex instrumental, conceptual, and mathematical puzzles to achieve the anticipated result in a new way and better than anyone who has attempted to solve it before. It is no criterion of goodness in these puzzles that the outcome itself be intrinsically interesting or important. On the contrary, many really pressing problems, such as finding a cure for cancer, are often not puzzles at all, largely because they may not have any solutions.

⁵⁵Kuhn (1970:37-38).

⁵⁶Kuhn (1970:38).

A hypothesis is important if it ‘explains’ much by little, that is, if it abstracts the common and crucial elements from the mass of complex and detailed circumstances surrounding the phenomena to be explained and permits valid predictions on the basis of them alone. To be important, therefore, a hypothesis must be descriptively false in its assumptions ... [and take] account of ... none of the many other attendant circumstances, since its very success shows them to be irrelevant for the phenomena to be explained. To put this point less paradoxically, the relevant question to ask about the ‘assumptions’ of a theory is not whether they are descriptively ‘realistic,’ for they never are, but whether they are sufficiently good approximations for the purpose at hand. And this question can be answered only by seeing whether the theory works, which means whether it yields sufficiently accurate predictions.⁵⁷

The above excerpt, though lucidly stressing the conviction that descending from general assumptions to specific applications is the only possible way to generate sufficiently accurate predictions, offers no clue as to why even the most accomplished practitioners of normal science often fail to generate sufficiently accurate results from evidently valid assumptions. This observation clashes with the basic notion underlying the deductive path that in order for an argument to be valid its conclusions must necessarily follow the initial premises, that is, the conclusions must be certain if the premises are true. For an inductively valid argument, conversely, it is sufficient for its conclusions to be merely probable if the premises are true. This crucial distinction can be clarified with a simple example. Assume that you have observed that Mary and John live in the same

⁵⁷M. Friedman, “The methodology of positive economics” from his *Essays in Positive Economics*, Chicago: University of Chicago Press, reprinted in F. Hahn and M. Hollis (eds.), *Philosophy and Economic Theory*. Oxford and New York: Oxford University Press ([1953]1979:26-27).

house, have the same last name, and that Mary keeps a picture of John in a locket around her neck.⁵⁸ If you have concluded from these observations that the two individuals are married, you have violated the deductive scheme of formal argument. For, that conclusion cannot categorically be derived from the three observations. Indeed, among many other possible conclusions, Mary and John might be siblings, a parent and child, or, for that matter, an unmarried couple who happen to share the same last name. Yet, the conclusion that John and Mary are husband and wife is inductively valid, since it is highly probable.

Evidently, the deductive method is strong where the inductive method is weak and weak where the deductive method is strong. Inductive arguments, inherently more informative than their premises, may safeguard researchers from the danger of building a model on false foundations. On the flip side, even a most convincing inductive argument introduces a goodly measure of error into the process of knowledge generation considering that it cannot guarantee the truth of its conclusions even when the premises are true. Deductive arguments certainly fit the bill in this respect, since only in extremely rare cases would a conclusion be 100 percent true. Friedman, pragmatic as any economist, evidently did not discriminate between a deductively valid conclusion and a highly plausible one. But it makes a difference to a philosopher or logician whether a conclusion is indeed certain, or only true 999 times out of 1,000.⁵⁹ Karl Popper's famous

⁵⁸The example is inspired by J. R. Anderson, *Cognitive Psychology and Its Implications*, San Francisco: W. H. Freeman (1980:329).

⁵⁹Anderson (1980:330).

example involving swans is apt here. He argues that the seemingly unassailable premise that all swans are white is actually an extremely precarious one, since it will break down completely even if a single swan of another color will ever have been spotted anywhere in the universe. This axiomatic stricture, while ostensibly affording the empirico-deductive method the capability of generating optimal results, actually implies the inherent difficulty of discovering absolutely valid ultimate realities. In the face of this impasse, researchers need to carefully examine what kind of evidence lies before them, and make a fateful choice at the outset of their investigation. Specifically, if the available or extricable data seem to lend themselves to impeccable logical and mathematical treatments, the researcher should embark upon a deductive investigative protocol and proceed to preserve, reiterate, and justify the ultimate truth. Otherwise, researchers should settle for an introspective and intuitional investigative agenda, directing themselves to the exploration, refinement, or expansion of smaller truths.

B) INDUCTIVE AND DEDUCTIVE APPROACHES TO ARTs. Two excerpts presented below closely reflect the two kinds of discourses drawn upon ARTs. The first, representative of the empirico/inductive or indeterministic orientation, is directly built upon the researcher's observation of the impact on the lives of single women by self-administered artificial insemination with donor sperm (SAID):

The women using [SAID] come from all walks of life. They are physicians, teachers, nurses' aides, social workers, psychotherapists, business executives, stewardesses, clerical and factory workers, principals, editors, and secretaries. Some are

feminists, others not at all consciously political. Ever since approximately 1976, increasing numbers of heterosexual career women have been using [SAID], Annette Baran, a clinical social worker and co-founder of the AID Research Project, reports. These women are able to take care of themselves. They want a child. They are in their thirties. They have no guarantee they will ever meet, love and marry a man who will also want a child. So they go on their own and bear a baby. "They are a whole different breed," Baran says, "They're all Virgin Marys. There is no sex involved. They are bragging about it all over the place. They do not feel like unwed mothers, Baran notes, because they did not get pregnant through an "illicit" sexual relationship. "They share it with their Board of Directors or their friends. They talk to everybody about it. They are very proud they're a kind of pioneer woman."⁶⁰

From here the author proceeds to argue the liberating nature of SAID for single heterosexual and lesbian women, stressing that this expansionary function would hold only for SAID. As for *physician*-assisted reproductive technologies, Corea does not deem them liberating at all. She characterizes these interventions as "male-generated" tools "buttress[ing] male power over women," which, in the hands of male professionals and their token female accomplices, serve to highlight the "Foreground," that is, the surface reality, while obfuscating the "Background," which encompasses the deeper truths affecting women's lives.⁶¹

An expansive and speculative drift is unmistakable in Corea's argument, as is the uncorroborated nature of its conclusions. Some readers, even those who

⁶⁰Corea (1986:44-45).

⁶¹Corea (1985:9n). Corea's conclusion involving Foreground and Background is based on the platform developed by Denise Connors and elaborated by Mary Daly and Janice Raymond. See D. Connors, "Sex preselection response," in H. Holmes *et al.* (eds.), *The Custom-Made Child*, Clifton, New Jersey: Humana Press (1981); M. Daly, *Gyn/Ecology*, Boston: Beacon Press (1978); and, J. Raymond, *The Transsexual Empire*, Boston: Beacon Press (1979).

share the same moral stance with Corea on this issue may not agree with her conclusions. For one thing, they may see it ending at the same point that it began. However, even if they discern no such tautology and, in fact, agree with the initial premise, they may derive from Corea's argument several alternative conclusions, very much like in the hypothetical case involving Mary and John. To name two, some supporters of the initial premise may conclude that the women referred to by Corea resort to SAID out of necessity rather than choice while others may disagree that these women are categorically deprived of the prospect of *never* meeting, loving, and marrying a man, or, for that matter, feeling like unwed mothers. Multiple conclusions occur because the observers may refer to a different repertoire of variables in seeking, choosing, and implementing an ART than the one mobilized by Corea with respect to the rightness of their chosen courses of action.

Now let us turn to a deductive argument concerning ARTs presented by an author subscribing to a particular brand of moral philosophy. Note the axiomatic, prescriptive, unswerving tenor of this discourse *vis-à-vis* the inventive, speculative, and unrestrained one adopted by Corea:

Reproductive technologies allow for procreation by single individuals without sexual intercourse, by lesbian and gay couples, and potentially by women without male involvement ... [This] challenges the symbolic unity of marriage, sexual intercourse, and procreation. In the Roman Catholic tradition, as in other religious traditions, children are viewed as the physical manifestation of a married couple's deep and enduring love. Under this description, the child serves as a witness to the "one-flesh unity" of the parents

and to the fruitfulness of their committed love. The concern that techniques such as artificial insemination and in vitro fertilization destroy the mutually conditioning relationship between marital love and parenthood by separating procreation from sexual reproduction is ...central to the Vatican's resistance to assisted reproduction.⁶²

The defining characteristic of the deductive approach becomes evident in this excerpt, namely that these arguments frequently turn to some universal hypothesis on the basis of which the benefits and sacrifices of different people are compared and judged.⁶³ The judgmental subtext of the argument would show no matter how forcefully its proponent may want to suppress it. To illustrate, if the author espouses the moral stand that the willingness of physicians to manipulate human sperm, eggs, and embryos for reproductive or genetic selection purposes is a deeply disturbing and unnatural practice, a threat to traditional conceptions of parenthood and family, this conviction would loom above the entire argument and would culminate in the unsurprising conclusion that "society should limit the liberty of individuals to beget a child by artificial measures," if not ban the practice altogether.⁶⁴ The author is likely to brand the "liberal" moral stand an "impoverished worldview in the analysis of the "profoundly life-altering experience ... [of] having, raising, and loving [one's] child within the context of

⁶²M. A. Ryan, *Ethics and Economics of Assisted Reproduction: The Cost of Longing*, Washington, DC: Georgetown University Press (2001:47).

⁶³T. M. Scanlon, "Preference and urgency," *The Journal of Philosophy* 72 (1975:655).

⁶⁴J. A. Robertson, "Liberty and assisted reproduction," *Trial* 30 (1994:49).

autonomous adult choice.⁶⁵ Indeed, the author would be apt to expound a “richer ethical framework” to govern such decisions, namely that “we must attend carefully to the values central to the relationship between parents and children, and not be satisfied with the valorization of choice and control in the hands of autonomous adults.”⁶⁶

To make matters more unsettling, conflicting conclusions concerning ARTs arise not only between authors who subscribe to one of the two competing epistemological protocols, empirico-inductive *versus* deductive/aprioristic, but also among investigators who espouse the *same* method of inquiry. To wit, among the authors grounded in the aprioristic school of thought, there are some who proceed to validate the hypothesis that ARTs represent a generally beneficial and well-established medical procedure while others attempt to prove that these interventions are harmful and frivolous. To illustrate, Mary Mahowald deems artificial insemination with donor sperm (AID) an innocuous procedure for dealing with male factor infertility and for the prevention genetic disease,⁶⁷ while

⁶⁵T. H. Murray, “What are families for? Getting to an ethics of reproductive technology,” *Hastings Center Report* 32 (2002:42).

⁶⁶Murray (2002:42).

⁶⁷M. Mahowald, “Ethical Considerations in Infertility,” *Infertility: A Comprehensive Text*, M. Seibel (ed.) Stamford, Connecticut: Appleton & Lange (1997).

Helen Holmes emphasizes the potential risks associated with in taking fertility drugs.⁶⁸

At other times, two authors espousing two opposite aprioristic premises arrive at the same conclusion. For example, John Robertson sees any ART as a quintessentially utilitarian apparatus, one which, though ostensibly designed to promote the individual interests of its users, simultaneously contributes to the augmentation of the commonweal.⁶⁹ A colleague of Robertson's, Dorothy Roberts, meanwhile, begins her argument by hypothesizing that ARTs promote a net social disutility by exacerbating social and economic inequalities, namely by allowing the rich and powerful to produce "designer children," thus perpetuating the hegemony of their ruling class.⁷⁰ Yet, at the end of their respective analyses, both investigators reach the same conclusion, namely that users of ARTs ultimately comply with socially beneficial family patterns in that they tend to produce offspring that are biologically related to themselves.

With respect to the deductive orientation, one of two paradigmatic perspectives usually steers discussions concerning ARTs: the economic, which

⁶⁸H. Holmes, "Reproductive technologies: The birth of a women-centered analysis," in H. B. Holmes, B. B. Hoskins, and M. Gross (eds.), *The Custom-Made Child?* Clifton, New Jersey: The Humana Press, Inc. (1981:1-17).

⁶⁹J. A. Robertson, "Assisted reproductive technology and the family," *Hastings Law Journal* 47 (1996:911-933).

⁷⁰D. Roberts, "Race and the new reproduction," *Hastings Law Journal* 47 (1996:935-949).

emphasizes an efficient equilibrium in the access to and provision of ARTs, and the ethical, which seeks an equitable solution. Only rarely does each approach appear in its pure form. The economic discourse is usually intertwined with relevant institutional considerations, especially the legal infrastructure impinging upon the free market conditions. Let us go back to John Robertson's concept of procreative liberty, for instance. This concept stems directly from the standard construct of *homo oeconomicus*. Robertson argues that prospective parents, as rational adults capable of deciding what is in their best interests, are the best judges to determine whether to conceive a baby, whether to bring the ensuing pregnancy to full term, and how to raise their offspring. If these individuals are infertile, ARTs would bestow on them greater control over their reproductive lives and offer a better chance to have healthy children.⁷¹ These individuals may discern in an ART a net utility in spite of the fact that the genetic transfer process would not necessarily originate from and culminate in themselves. Using Robertson's own words, such an individual would think of herself "as procreating whether [she] conceives without gestating or rearing, gestates without rearing or conceiving, or rears without conceiving and gestating."⁷² This thought is derived from the special nature of ARTs, which on the one hand permit the separation of the genetic, gestational, or social components of reproduction and, on the other, allow their recombination through human collaboration. Robertson finds in this happy turn of events the unmistakable workings of utilitarian logic, hence the

⁷¹J. A. Robertson, "Procreative liberty and the control of conception, pregnancy, and Childbirth," *Virginia Law Review* 69 (1983:407).

⁷²Robertson (1983:410).

appropriateness of felicific calculus in measuring the effectiveness of this medical intervention. All that is required for this utility enhancing procreative process to begin and culminate in a satisfactory outcome is that the decision-maker be physically and mentally capable so that she can choose the most appropriate reproductive technique for herself, that is, the alternative that will minimize harm and will yield maximum benefit. This course of action will contribute to social utility in a spiral fashion, since the individual's need to assure a healthy offspring and have a satisfying procreative experience will spur further social, legal, and scientific developments, which, in their turn, will drive still other women who currently postpone marriage and childbearing or have fewer pregnancies to augment both their own and their community's welfare.⁷³

At this point, Robertson embarks upon a discussion of the impact of the prevailing statutes on the demand for ARTs. He reminds us that in some societies ARTs are highly regulated and that this results in severe rationing of these services. However, even in societies where the legal environment is most permissive, particularly the United States, effective legal barriers still remain. Robertson finds this an inexplicable outcome since these laws do not specifically curtail the use of ARTs. If anything, the U.S. Supreme Court has deemed illegal any state interference in individuals' freedom to procreate. Unfortunately, in Roberson's opinion, the Court formulated this freedom as a negative right, which shields individuals from state interference, but does not guarantee the legality of

⁷³Robertson (1983: 406).

any conduct to bring a child into the world. However, the Court's stance should be interpreted as bestowing on women the right to control any part of their biological destiny, including the decision to have a baby, even in those cases in which a woman or her partner may be infertile.⁷⁴

Critics immediately rise to arms. Thomas Murray, for example, finding this extrapolation entirely invalid, reminds that the legal cases Robertson bases his argument upon actually demonstrate the Supreme Court's narrow intent to allow individuals to mobilize technologies of contraception or abortion in case they choose *not* to have children.⁷⁵ However, as for the presumed right to *have* children through the use of ARTs, Murray finds no indication in these decisions of any attestation of individuals' right to procreate by "artificial and unnatural" reproductive means.⁷⁶ Thus, the deductively-oriented discussions of Robertson and Murray concerning the appropriateness of ARTs as a medical intervention culminate in two opposite conclusions, one for and the other against the use of ARTs, depending on how each has interpreted a pivotal initial premise.

The above illustrations reiterate the point that the strength of deductive arguments rests on the validity of the overarching schema these arguments aim to verify. Inductive arguments, by contrast, largely transcending paradigmatic

⁷⁴Robertson (1994:50).

⁷⁵Murray (2002:42), referring to *Skinner v. Oklahoma* (1942), *Stanley v. Illinois* (1972), and *Eisenstadt v. Baird* (1972).

⁷⁶Murray (2002:42).

prescriptions, may provide expansionary explanations, and, in rare occasions, new theories. In the latter event, considerable time must transpire before the alternative theory takes hold. The appearance of a challenging alternative theory transition often creates serious repercussions in the indicated scientific community as some practitioners reconstruct their view of the world under the new rubric while others entrench themselves in the traditional one. As the views become more and more polarized, ordinary means of discussion break down and the two competing parties turn to techniques of mass persuasion.⁷⁷ This is exactly what we are witnessing in the two competing views involving ARTs, one for and the other against the appropriateness of these services for some the segments of the population. Accordingly, the need has arisen for a more integrative methodological framework concerning ARTs, one that is conducive to an equilibrium that is both efficient and equitable. But before going on to discussing how one is to proceed to achieve this dual objective some additional aspects of the two methodological approaches need comment.

C) MORE ON THE INDUCTIVE APPROACH. If by deductive method is meant an investigative protocol directed to generate conclusions from initial premises, then in cases in which these premises cannot be established with certainty the deductive method will become moot. Inductive arguments may be more appropriate in such cases, albeit with more room for error. To illustrate this point, let us go back to the case involving John and Mary. Consider that your conclusion concerning the conjugal status of these two individuals has been weakened

⁷⁷Kuhn (1970:93).

somewhat because you observed that John spends some nights outside the home he shares with Mary or that Mary stopped wearing her locket containing John's picture. You might still maintain your previous conclusion that Mary and John are married, but this time more tentatively. Conversely, suppose that you observed that Mary and John wear identical wedding bands. This time around, your conclusion about their status as a married couple will gain more strength. To elaborate on an obvious point, suppose that you saw John's and Mary's wedding pictures or, indeed, their wedding certificate. Under these conditions, it would be possible to reach generalizations that more than adequately explain, summarize, or highlight a given phenomenon.

These generalizations will still be shy of conclusions that one could derive by following a deductively sanctioned protocol. In fact, no inductively derived generalizations, no matter how seemingly unassailable, will ever be on a par with the exceptionless generalizations that could be derived from a deductively conducted inquiry based on a true premise. This characteristic bestows on developers of deductively-derived generalizations absolute power of prediction and control, though not necessarily explaining the nature of the phenomenon under consideration. To illustrate, by referring to a physical law establishing what grades of steel would expand by how many millimeters per yard as temperature is raised to a certain degree, you may not only correctly predict how much the bridge you intend to build with that steel will expand as the weather reaches a given temperature, but also effectively control the result by taking the necessary

measures. You can achieve this feat regardless of whether or not you remain ignorant of the physical process that actually gives rise to this phenomenon.

The deductive method is not endemic to natural sciences and technology. To give an example from social sciences, the law of demand establishes once and for all that there is an inverse relationship between the price of a commodity and quantity demanded of it under appropriate conditions. Accordingly, if you have determined by what proportion the quantity demanded of a commodity varies *vis-à-vis* a change in price, *ceteris paribus*, you can not only determine at what price and quantity levels the market will clear (prediction), but also act accordingly, that is, effectuate or not to effectuate the purchase of that commodity at that price (control). By contrast, only rarely can inductively inclined studies offer generalizations of the same order. As a result, most inductively oriented investigators must content themselves with generalizations that are: (1) good enough, rather than optimal; (2) satisfactory only in terms of their own needs, rather than universally; and, (3) valid only under the given set of constraints, but not in a dynamic decision environment.

The prospect of attaining sub-optimal outcomes rather than ideal does not necessarily daunt inductively-oriented researchers who, knowing that in our world *ceteris* are seldom *paribus*, proceed with their investigations just to supply outcomes that may expand existing knowledge. Theirs would not necessarily assume a compromised epistemological stance considering that there exist so few

universally consistent states of nature in the world. Myriad little differences and incongruities actually surround our existence, thus it may be quite commendable from a sheer epistemological perspective to provide helpful explanations to these disparate phenomena, and it is precisely at this point that there emerges the value of the inductive method. Naturally, the hope remains that an inductively derived explanation would turn up with increasing frequency, assume the dimensions of a new paradigm, and eventually change a scientific community's entire conceptual system. Such paradigmatic transformations have happened quite a few times in the history of science. That Pasteur's inductively oriented argument concerning fermentation eventually changed the entire way of thinking about this phenomenon is a case in point.

When Pasteur embarked on his inquiry in the late 1850s, investigations produced no microscopic evidence of a biological presence in fermentation. What was being observed was an ordinary chemical, non-living reaction involving two otherwise inert substances, one fermentable (such as grape juice) and the other fermenting (such as yeast), interacting with each other only when mixed together. In face of this well attested "evidence," the alternative argument made by Pasteur that fermentation is the consequence of the life processes of microorganisms seemed to fellow chemists not only controversial, but also weak and circular. Their judgment was not entirely unwarranted. Indeed, Pasteurs' first research papers displayed the trademark characteristic of inductive argumentation, as they were rife with unsubstantiated generalizations and speculations rather than hard

evidence.⁷⁸ However, his subsequent papers imparted a more and more cogent and stringent tenor, especially his 1860 “Memoir on the Organized Corpuscles which Exist in The Atmosphere,” in which he formally debunked the chemical theory, and his “New Experiences and Insights on the Nature of Fermentation” presented to the Academy of Science in the following year, in which Pasteur stated his hypothesis that “fermentations [are] correlative to the presence and proliferation of living organisms, with a different organism corresponding to each type of fermentation.”⁷⁹ In the aftermath of a series of experiments, Pasteur finally proved within the course of two years that it is microorganisms that cause fermentation, and that these living entities do not occur spontaneously, but are born to the same organisms impregnating ordinary air. Independent researchers soon replicated Pasteur’s findings, including C. J. Davaine (1863), Joseph Lister (1867), and John Tyndall (1876). In fewer than twenty years, from 1857 when Pasteur read his first paper to 1876 when Tyndall gave his definitive lecture, Pasteur’s idea that “fermentation is life without air” rendered many different areas of information coherent and answered many specific questions hitherto unexplained by conventional physical and medical scientists. The new paradigm gave rise to an entirely independent discipline, microbiology, which lent itself to further discoveries, each of which added substantially to our scientific knowledge.

Not all paradigms change as pervasively or as rapidly. For instance, a contemporary of Pasteur’s, Dr. Semmelweis—who hypothesized that the root

⁷⁸Gale (1979:157).

⁷⁹Gale (1979:267-268).

cause of puerperal infection was not a “miasma” that permeated the crowded maternity wards of public hospitals, but germs carried from autopsy rooms on the unwashed hands of obstetricians—was plagued his entire life by the failure of the medical community to accept and act upon this valid explanation. Paradigms evidently hold a persistent sway on our perceptions and sensations. Their replacement occurs only after the prevailing system of thought grows increasingly more unsatisfactory in explaining emergent problems as the new operational framework offers more and more relevant explanations.

D) THE INDUCTIVE/EMPIRICAL APPROACH TO ARTS. The two goals of scientific investigation, to explain and to predict, are often divorced from each other, with some investigators aiming at elucidating the first and others the second scientific objective. As such, not all scientists agree with Friedman’s dictum that the main goal of scientific investigation is to equip practitioners exclusively with the power of prediction and control; indeed, some judge the attainment of the second objective the greater achievement. George Gale remarks:

prediction about something does not let you control *its* behavior, it allows you to ... modify your *own* behavior to conform to the predicted behavior of the object. Prediction and control together, represent the lowest state of scientific knowledge. To see this, consider the following example. In most cases, we can quite securely predict that “For all persons, if *x* takes aspirin, then *x*’s headache will go away.” Moreover, since the prediction is usually true, we can control headaches. But the fact is, we have not the faintest glimmer of an idea about how or why aspirin works. That is, we cannot explain the effect of aspirin, and thus, we do not understand the relation between aspirin and headaches. Consequently, although we know how to predict and control, we

do not understand the underlying explanation of why it works. The how and why knowledge together constitute the highest state of scientific knowledge.⁸⁰

Surprisingly, Friedman's and Gale's arguments share a common ground, which consists of the observation that in order for a theory, hypothesis, paradigm, or thought system to be truly satisfying, it should not only lend itself to generate a plausible solution, but also to impart a sense of how and why it leads to that outcome. Consequently, an intuitive/conceptual argument that fits empirical evidence should be commended rather than branded as frivolous and insignificant. In fact, critics should consider how they can graft these arguments onto their deductive protocol to soften the paradigmatic trappings of their scientific field, to clarify definitions, and to allow practical inferences. This is precisely the approach that I am taking with respect to the analysis of the issues impinging upon the use of ARTs.

The inductive, indeterministic approach aptly lends itself to the development of a patient-centered model of demand for ARTs. This premise will be elaborated by examining an emergent discussion concerning ARTs, namely, their long-standing unavailability to single heterosexual women and lesbian couples. Coverage of this problem in philosophical literature has been extremely slim. Julien Murphy has remarked in a recent work that her survey of *The Philosophers Index* spanning from 1970 to 1996 yielded only three articles on

⁸⁰Gale (1979:63-64). Emphases in the original.

ARTs and lesbian parenthood.⁸¹ Murphy has found a more fertile ground in the medical ethics literature, but even publications in that field fail to offer an efficacious solution to a particular problem that vexed her and her partner for some time:

A few years ago, my partner and I began using assisted reproduction to conceive our first child, and it occurred to me as I wondered about lesbians' access to reproductive services, insurance coverage, and parenting rights for nonbirthing partners that there was little difference between us and the many infertile heterosexual couples for whom reproductive services were designed. While we lacked a medical reason for an infertility diagnosis, the similarities in the treatment plan and goal suggested that perhaps lesbian couples might be regarded as having a sort of "relational infertility" that could be said to accompany lesbian relationships. Armed with a medical diagnosis, our reproductive concerns would be seen as legitimate. Our access to services would increase, they would be covered by insurance, and we would be granted the crown jewel of benefits afforded married heterosexual couples using donor insemination—parental rights for the nonbirthing partner. Despite similarities between our situation and that of those who are routinely diagnosed as infertile, infertility specialists do not regard as infertile lesbian couples who use physician-assisted insemination. But why not?⁸²

Murphy embarks upon an unmistakably inductive path to find an answer to that question. Considering her and her partner's plight as a tell-tale case of antilebian discrimination, Murphy proceeds to develop a strategy for an equitable

⁸¹J. S. Murphy, "Should lesbians count as infertile couples? Antilebian discrimination in assisted reproduction," in M. Bernstein and R. Reimann (eds.), *Queer Families, Queer Politics: Challenging Culture and the State*, New York: Columbia University Press (2001:198n). The articles listed by Murphy are those of Hanscombe (1983), Robson (1992), and Forster *et al.* (1978), fully cited in the bibliography.

⁸²Murphy (2001:182-83).

solution to lesbian couples' access to ARTs. Not locating in current literature a workable paradigm specific to the lesbian experience, she proceeds to develop a new one herself. She does this by referring to the primary criterion used to determine the eligibility for access to ARTs, namely, the legal qualification that the prospective users of these technologies must be heterosexual couples with a diagnosis of infertility. Murphy notes that a diagnosis of infertility bestows upon heterosexual couples several advantages: (1) unencumbered access to ARTs; (2) insurance coverage for these services; and, (3) automatic parental rights for the nonbirthing parent. These benefits, available to all heterosexual couples who have demonstrated their infertility by not effectuating a pregnancy after one year of unprotected sexual intercourse,⁸³ are summarily withheld from lesbian couples. Murphy finds this practice an egregious form of antilesbian discrimination and goes on to investigate its provenance and consequences. She traces the source of this prejudice to the view entrenched in the medical community that lesbian couples requesting ARTs do so in order to "fulfill a social wish" rather than "remedy a medical condition."⁸⁴ A parallel argument for denial of ARTs for lesbian couples is that the application of ARTs to these individuals would result in the violation of the Hippocratic precept of *nolo nocere* since it might cause trauma to the resulting offspring from being raised in a nontraditional family or

⁸³Speroff *et al.* (1999:1013).

⁸⁴Murphy (2001:186), referring to D. H. Wilson, "AID for lesbians (letter)," *British Medical Journal* 2 (1979:669).

from not knowing his or her biological father.⁸⁵ Heterosexual couples with genetic disorders or male factor infertility, meanwhile, are considered to have a *prima facie* right to demand ARTs if, by not effectuating a pregnancy after a year of sustained effort, they have demonstrated the existence of a medical *affliction* requiring treatment.⁸⁶ Faced with this dichotomy that is deeply ingrained in the medical community, Murphy comes to the conclusion that the only way to empower lesbian couples to demand equal access to ARTs is to ascribe a diagnosis of non-biological or “relational” infertility to the birthing partner. Note that this conclusion has originated entirely *ex nihilo*, without reiterating any axiomatic propositions beyond the two generally accepted ethical principles that (1) nobody should be denied a beneficial medical treatment, and (2) all persons should be treated in the same way, unless an exigency justifies treating somebody differently.

The procedure followed by Murphy is representative not only of the intuitive and speculative argumentation typically used in inductive work, but also of the point made earlier that two investigators reacting to the same observation may arrive at the same conclusion although they have followed two different inductive paths. Recall Corea’s conclusion concerning SAID. She has found this procreative intervention a liberating experience for single heterosexual women

⁸⁵Murphy (2001:188), referring to I. M. Cosgrove, “AID for lesbians (letter)” and F. E. S. Hatfield, “AID for lesbians (letter),” in *British Medical Journal* 2 (1979:495 and 669, respectively).

⁸⁶Murphy (2001:188), referring to J. C. Fletcher, “Artificial insemination in lesbians: Ethical considerations,” *Archives of internal Medicine* 145 (1985:419-20).

and lesbian individuals or couples, though she deemed other forms of ARTs objectionable for their perpetuating male dominance over the female population. The premise Corea has based her argument upon was the loosely formed but pervasive hypothesis originated by Connors, Daly, and Raymond involving the notions of “Background” and “Foreground.” Murphy, too, after taking an entirely different inductive track as compared to Corea’s, arrives at the same conclusion. She stresses at the beginning of the concluding section of her argument that, notwithstanding the preceding discourse on the effectiveness of relational infertility in securing access to medical treatment, the clustering of single women and lesbian couples in the same subpopulation would be an aberration culminating in a disservice to lesbian couples. Murphy bases this conclusion on her observation that lesbian couples demanding ARTs differ substantively from single heterosexual women seeking AID:

Single women pursuing donor insemination do not [need] a diagnosis of infertility. For many [of these women] the option to reproduce outside of a relationship is liberating. But lesbian couples are reproducing *within* relationships. This is an important difference. Also, single women may choose assisted reproduction because there is no one with whom they wish to reproduce. Many lesbians long to be able to reproduce with their partners, a difference shared with infertile heterosexual *couples*.⁸⁷

Hence, upon keen deliberation, Murphy reaches the conclusion that a diagnosis of relational infertility would actually affect lesbian couples regressively. Specifically, it would result in: (1) pressing lesbian couples to fit

⁸⁷Murphy (2001:196). Emphasis added.

their reproductive considerations into a decidedly heterosexual template; (2) burdening lesbian couples with the same expectation of compulsory motherhood the community exerts on heterosexual couples; and (3) reinforcing the longstanding prejudice in the general population that homosexual individuals are medically abnormal. So, on balance, the strategy of instituting the concept of relational infertility would end up being more limiting than liberating, hence exacerbating rather than mitigating existing antilebian discrimination. For ARTs to be liberating, they should remain entirely elective procedures, available to all seekers, regardless of whether or not the seekers have a real or perceived deficiency, biologically or relationally. In other words, lesbian couples should resist the urge to argue for parity with heterosexual couples on the basis of a diagnosis of non-biological infertility. The argument thus corroborates the point made earlier that an empirico-inductive discourse informs the reader beyond the premises from which it proceeds. Indeed, Murphy reaches a conclusion that is direct opposition to the initial premise she established, namely that a diagnosis of relational infertility would put a lesbian couple on a par with heterosexual couples suffering from infertility.

I discussed in this chapter that inductively-inspired methods of inquiry may prove more valuable than aprioristic methods in those cases in which an investigation cannot proceed from unquestionable premises. This is especially true in the analysis of the utilization of ARTs, where different segments of the population display different motivations and ethical considerations in their

decisions concerning these remedies. But, before hastening to conclude that the inductive method is the only option in such investigative endeavors, I turn to the deductive/aprioristic methodological approaches once more to present further relevant dimensions in their application to the analysis of ARTs.

CHAPTER 2

DETERMINISTIC APPROACHES TO ASSISTED REPRODUCTION

The term “deterministic” is used throughout this text to define the research agenda whereby the investigator starts with a certain axiom or hypothesis and prescribes the rules of inference that lead to the derivation of true conclusions arising from the initial premise. Such a deductive/aprioristic inferential protocol entails conditional statements. The defining characteristic of a deductive/aprioristic argument is that they take the form of: “if so-and-so, then such-and-such.” To illustrate, *if* Mary carries a picture of John in a locket around her neck, *then* Mary loves John. Evidently, this conditional statement does not render true the conclusion that Mary indeed loves John. In fact, from this antecedent-consequent relationship one can derive four different conclusions, not all of them consistent with the true conclusion that Mary loves John. The information can be summarized in the following truth table:

Mary carries John's picture	Mary loves John	<i>If</i> Mary carries John's picture, <i>then</i> Mary loves John
True	True	True
True	False	False
False	True	True
False	False	True

This table does not help us reach an accurate conclusion. The problem can be alleviated by enriching the propositional calculus with a plausible

presupposition in such a way that when this presupposition remains unfulfilled the statement is deemed neither true nor false, but null and void. In this particular instance, it may be presupposed that if Mary does not carry John's picture in her locket, then the statement about Mary's loving John is irrelevant. In this case, the truth table would be revised as follows:

Mary carries John's picture	Mary loves John	<i>If</i> Mary carries John's picture, <i>then</i> Mary loves John
True	True	True
True	False	False
False	True	Void
False	False	Void

Evidently, the second truth table, though simplified substantially by the insertion of a reasonable presupposition, is still not conducive to a definite conclusion. This is as far as deductive logic can be stretched to yield a true conclusion, unless the antecedent can be proven to be true. For, only if it has been noticed with unerring frequency that when a person carries someone's picture in a locket then he or she loves the latter can we reduce the truth matrix to a single row, that is, to conclude in this case that Mary loves John. One can think of some situations in which this logic is applied without formally proving the truth of the initial premise. For example, if a stranger approaches me, sticks a gun in my face, and demands my wallet, I will act on the premise that he wants my wallet. I know only too well that my premise may not be the only valid one: but I would not want

my system to question it for the sake of logical purity.⁸⁸ However, there may be situations whereby a *perfect* prediction should be indicated. To illustrate, if I am an engineer commissioned to build a bridge, I would like to be one hundred percent confident that it will not topple in the face of a hurricane of a certain category. Yet, in some other situations a strong probabilistic prediction might be sufficient. For instance, if I can predict with ninety-five percent confidence that my patient who is unconscious in the aftermath of a motor vehicle accident will fully recover from the effects of an emergency procedure, I will be willing to go ahead with the procedure. My conclusion, and the resulting resolve, is derived from a decidedly deductive/aprioristic calculus, based on known premises (*e.g.*, age, extent of trauma, presence of co-existing medical conditions), relevant data concerning the degree of safety of the procedure (available in peer-reviewed literature or case reports), and an appropriate decision rule (*e.g.*, I never take a course of action unless there is a positive ratio of benefits *vs.* risk).

It should be recalled from earlier discussion that the decisional process mentioned above, while sounding eminently positivistic, does not exactly coincide with the kind of positivism described by Popper. Popper's point, elaborated earlier by the white swan metaphor, is that it is *impossible* for researchers to uncover universal laws underlying human behavior from conditional propositions when the antecedents cannot be proven to be true. But this is tantamount to saying that positive evidence will almost always be incapable of proving a hypothesis with certainty. The only way to circumvent this

⁸⁸The example is culled from Anderson (1980:301).

impossibility is to formulate negative, falsifiable hypotheses and then attempt to negate them rather than justify their validity.⁸⁹ This is exactly the methodological stance espoused by Milton Friedman and his fellow adherents to positive economics.

Political economists disagree with this rigid methodological stand. Anthony Downs warned half a century ago that an overly positivistic orientation would impose an unnecessarily stifling methodological condition on economic research, negating the effects of institutional realities that evidently impinge on rational choice. He reminds economic scientists that the term “rationality,” profusely used in their theorizing, denotes nothing more than “efficiency,” a definition that must not be confounded with how the term is used in logic (to indicate the ability to institute and follow logical propositions) or psychology (to indicate calculated, unemotional behavior).⁹⁰ In political economy, human action is thought rational as long as the agent—be it a consumer, producer, voter, or politician (or, by extension, a patient or physician)—acts in such a way that he or she simultaneously promotes his or her benefit and displays socially-minded (*i.e.*, moral) behavior. Downs stresses that it is perfectly fitting for a political economic argument to start off with some normative rule, such as: “the ‘proper’ function of government is to maximize social welfare,” provided that the proponent of the argument applies appropriate restrictions on the preference orderings of the voter

⁸⁹K. Popper, *The Poverty of Historicism*, London: Routledge and Kegan Paul (1957: 40). For Friedman’s defense, refer to Chapter 1 of this work.

⁹⁰Downs (1957:139,10n).

as well as the politician such that both groups of agents are allowed to act in conformity with their respective interests.⁹¹ A surprising outcome that results from Downs' normative argument is that it does not disagree with the positivistic position taken by Friedman. This occurs because both Downs' and Friedman's arguments fully heed Popper's exhortation to positive scientists that they loosen up their dogmatic beliefs and proceed to disestablish the established theories, that is, make sure that their paradigmatic orientations, political and ethical convictions, as well as the logic of the situation at hand, do not hamper their quest to falsify the accepted premises.⁹² As such, an interface opens between Downs and Friedman, which extends between the positive and normative modes of economic analysis, one upon which can be rested an exchange process that complies with the conditions that exist both in the polity and the economy. Such a unified methodological approach would lend itself most suitably to the analysis of the utilization of ARTs, which takes place in a multidimensional decision environment.

So far, this decisional process has been tackled from one of the two opposite points of view stemming either from economics or from ethics. The first approach generally subscribes to the positive while second to the normative mode of analysis. The practical problem that arises in this field of investigation is that neither economics nor ethics subscribes to a single, monolithic paradigmatic structure. There exist alternative perspectives in both spheres of scholarship and

⁹¹Downs (1957:135-36).

⁹²K. Popper, *Conjectures and Refutations*, New York: Harper Torchbooks (1965:33n).

research, which render the consolidation of economic and ethical variables within a unified theory applicable to ARTs very difficult. Yet, some accommodation of the basic dimensions of the two perspectives does not seem impossible once certain problems specific to the access (demand) and provision (supply) of procreative technologies are cleared out on the methodological path. These problems are elaborated in the following section.

A) THE ECONOMIC PERSPECTIVE AND ARTs. The economic method readily lends itself to the analysis of the relationship between a patient seeking ARTs and a health practitioner qualified to provide this service. Economists steeped in the first principles of their science would not hesitate to characterize this relationship as an exchange process taking place between a consumer (the infertile patient) with a particular want (having children) and a supplier (the physician) of a class of commodities (ARTs) apt to satisfy that want. The consumer, in compliance with the postulates of rationality and self-interest, is assumed to have duly deliberated on the want-satisfying properties of this commodity *vis-à-vis* her budget and the perceived productivity of each alternative. If, at the end of the deliberation, the consumer has found the benefit stemming from one of the commodities to exceed its cost, then she would proceed to demand that product from its supplier. As such, the market mechanism applicable to the “demand” and “supply” of ARTs is not substantially different from the exchange process involving, say, an overseas vacation package that a person purchases in the

middle of September after taking into consideration the perceived benefits and costs associated with that trip that will be “due” in July of the following year.

To most social, behavioral, and moral scientists, defining a baby in terms of an economic commodity would appear an egregious oversimplification at best. Yet, this is exactly what economists have been doing since 1960, when Gary Becker, the University of Chicago economist and Nobel laureate, published his *Economic Analysis of Fertility*. In it, Becker characterized the birth of a child as an event bestowing substantial benefits on parents and relatives, very much like the purchase of a major durable consumer commodity, say, a new car or refrigerator. Many economists immediately picked up Becker’s lead and depicted children as ordinary providers of utility, “someone to talk to or go on a walk with ... [or] ready-made partners for a game of Ping-Pong or checkers.”⁹³ These benefits come with considerable cost, encompassing explicit expenditures (the cost of giving birth, providing food, clothing, shelter, education, entertainment, medical care, insurance, transportation, and so on) as well as implicit ones (emotional drain or the parents’ time spent on rearing the child).⁹⁴ This is not to say that the choices revolving around the conceiving, giving birth, and rearing a child generate private benefits only. To use an economic term, there is a great deal of social “spillover” of this seemingly individual choice. Prospective parents seem to be quite aware of these consequences. Indeed, some individuals are motivated

⁹³Tullock and McKenzie (1985:84).

⁹⁴Tullock and McKenzie (1985:86).

to have children to make a contribution to society while others opt to do so in order to negate the unspoken criticism of relatives and friends that they are incapable of having or, by extrapolation, loving children.⁹⁵

The first premise underlying an economic discourse is that when agents are informed about the explicit and implicit costs and benefits attributable to a given commodity they stand a chance to use this information to increase their respective utilities.⁹⁶ The second is that an increase in private wellbeing simultaneously increases collective wellbeing. The genesis of this happy overlap goes back to Adam Smith, who envisioned a “natural identity” between private interest, with public interest arising not “from the effect of any conscious regulation by the State or society [or] ... any human wisdom, [but from] ... a

⁹⁵Tullock and McKenzie (1985:85).

⁹⁶The term “utility” denotes the direct satisfaction that a commodity yields to its possessor. The term was coined by Jeremy Bentham: “By utility is meant that property in any object, whereby it tends to produce benefit, advantage, pleasure, good, or happiness (all this in the present case comes to the same thing) or (what comes again to the same thing) to prevent the happening of mischief, pain, evil, or unhappiness to the party whose interest is considered” (*Principles of Morals and Legislation* (1789), reprinted in W. Ebenstein (ed.), *Great Political Thinkers: Plato to the Present*, New York: Holt, Rinehart and Winston (1961:507). The concept was refined by Bentham’s star pupil, J. S. Mill, who wrote: “That a thing may have any value in exchange, two conditions are necessary. It must be of some use, that is, it must conduce to some purpose, satisfy some desire... But, secondly, the thing must not only have some utility, there must also be some difficulty in its attainment” (*Principles of Political Economy*, London: Parker, Book I, Chapter II, (1849:540). The same notion was corroborated by P. A. Samuelson a century later: “The utility analysis rests on the fundamental assumption that the individual confronted with given prices and confined to a given total expenditure selects that combination of goods which is highest on his preference scale” (*Foundations of Economic Analysis*, Cambridge, Massachusetts: Harvard University Press (1947:97-98).

propensity in human nature.”⁹⁷ As such, any “artificial” measure generated by the social, political, or legal authority that is not in conformity with the principle of individual interest would only serve to harm the interest of the community.⁹⁸

The problem with Smith’s exhortation of the invisible hand of individual enterprise is that it does not find a fitting reflection in the ARTs “market.” In fact, there exist two serious paradigmatic imperfections, the first of which is entrenched in the supply side. As was remarked by Julien Murphy, the use of this product has long been restricted only to heterosexual couples who have demonstrated their infertility by not conceiving after one year of unprotected sexual intercourse.⁹⁹ This restriction excludes a sizeable segment of the ARTs market comprising single women and lesbian couples who, despite a marked willingness and ability to pay a commensurate price for this commodity, are debarred from its consumption. Considering that in most economies health insurance policies either do not cover or only partially cover the out-of-pocket costs for ARTs, consumers who demand these commodities have demonstrated not only their willingness, but also their ability to pay for these services, thus qualifying as “effective” demanders. Accordingly, their exclusion from reaping the benefits of ARTs results in negative utility, which cannot be offset by any

⁹⁷A. Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, Chicago: The University of Chicago Press, ([1776]1976:Book I:17).

⁹⁸Smith ([1776]1976:Book I:17).

⁹⁹J. Murphy (2001:191), referring to L. M. Talbert, “Overview of the diagnostic evaluation,” in M. G. Hammond and L. M. Talbert (eds.), *Infertility: A Practical Guide for the Physician*. Cambridge: Blackwell (1992:2). Also see L. Speroff (1999:1013).

conceivable compensatory measure, say, by charging a higher price to those who are allowed to consume ARTs and redirecting the collected funds to those who are not. Thus we are presented with a classic “market failure,” whereby the invisible hand of price mechanism cannot produce an efficient equilibrium on its own. The intervention of an authorized agency is called for to break the impasse.

The second imperfection pertains to the demand side of the exchange equation. Price theory postulates in no uncertain terms that the economic act is independent of normative considerations. Consumers are assumed to make rational choices in an entirely amoral decision environment where they proceed to attain predetermined, self-interested goals in the face of their given resources. Though this model of human behavior has lost some of its stringency in the last twenty-five years thanks to the contributions of behaviorally-oriented authors such as Tversky, Kahneman, and Thaler, conventional economic logic still clings to its abstract foundations.¹⁰⁰ The problem with this operational framework is that it is not consistent with the common observation that consumer behavior is influenced by a host of non-economic variables. Nowhere is this observation more obvious than in the ARTs market, where consumers are in fact overwhelmed by ethical, social, religious, and legal imperatives impinging upon on their decisions concerning these commodities.

¹⁰⁰Recall L. Robbins’s argument in Chapter 1, cited in Note 3.

Despite these pitfalls, the economic method continues to be liberally employed in the analysis of the provision and access of healthcare in a marked effort to produce an efficient distribution of this social good. Unfortunately, what constitutes an efficient distribution does not simultaneously comply with the requisites of an equitable distribution. The wariness is conspicuous in the mission statement of the immensely influential report by the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research:

The Commission considers it clear that health care can only be judged adequate in relation to an individual's health condition ... Most people will agree [that] some conditions should not be included in the social obligation to ensure access to adequate care. A relatively uncontroversial example would be changing the shape of a functioning, normal nose, or retarding the normal effects of aging [through cosmetic surgery]."¹⁰¹

The authors of the report, while squarely recognizing equitable access to adequate healthcare as a social obligation, delegate to economists and ethicists the task of determining what health conditions ought to fall within the purview of this moral duty and what ought not.¹⁰² Now that we have had a glimpse of how economists would address this task, let us turn to how ethicists would typically handle the problem. Before proceeding in that direction, however, let us first

¹⁰¹President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, *Securing Access to Health Care: A Report of the Ethical Implications of Differences in the Availability of Health Services*, Vol. 1, Washington, D.C. (1993:35-36).

¹⁰²President's Commissions Report (1993:35).

revisit a middle ground between economics and ethics occupied by the proponents of procreative liberty.

B) A MORE DETAILED LOOK AT THE PERSPECTIVE OF PROCREATIVE LIBERTY.

One does not have to be an economist to adhere to the trademark postulates of economic method of inquiry that individuals act rationally and prudently to maximize their utility *vis-à-vis* their budgets. The natural corollary of these postulates is that nobody except individuals themselves can rank their preferences and determine the prices they are willing and able to pay for the commodities apt to satisfy those preferences. In other words, individual autonomy emerges as the necessary and sufficient condition for utility maximization. Many jurists and some bioethicists also adopt this methodological stance in their arguments that the members of all conjugal units should be entitled to full discretion in their decisions to conceive a child, terminate a pregnancy, or bring it to term irrespective of their reproductive capabilities.¹⁰³ According to their view, the fact that some individuals may require medical assistance to be able to satisfy their wish to have a baby through procreative technologies does not invalidate the basic moral premise that nobody should interfere with the materialization of this personal wish. Some proponents of this view point out that the principle of non-interference was established by no less an authority than the U.S. Supreme Court, in whose view the right to privacy entails “the right of the individual, married or

¹⁰³Two foremost jurists making this assertion are J. A. Robertson (1983, 1994, and 1996) and D. Roberts (1995 and 1996). As for bioethicists defending individual decisional autonomy, see L. W. Singer (1987), R. M. Hare (1981, 1998) and R. Young (1998). Full citations of these works are in References.

single, to be free of unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.”¹⁰⁴ They note that the Court reiterated its stance twenty years later when it stated:

“our law affords constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, childrearing, and education ... [Such] intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment.”¹⁰⁵

John Robertson takes these two dicta to heart and deems them a declaration of a person’s unrestricted liberty to procreate through natural or artificial means. In his own words, a “couple’s interest in reproducing is the same no matter how conception occurs ... [since] both coital and noncoital conception enable the couple to unite egg and sperm and thus acquire a child of their genes and gestation for rearing.”¹⁰⁶ Thus, Robertson reemphasizes the three economic precepts established by Adam Smith that: (1) individuals display a natural disposition to correctly decide what is in their best interests; (2) these interests are inseparably connected with the general interest of society; and, (3) any effort from the public authority to curtail these interests would prove harmful to society.¹⁰⁷

¹⁰⁴*Eisenstadt v. Baird* (1972:453).

¹⁰⁵*Casey v. Planned Parenthood* (1992:2791).

¹⁰⁶Robertson (1996:939 and 961).

¹⁰⁷Smith ([1776]1976:Book I:76-78).

The only difference between the two authors, writing more than two centuries apart, is that the individuals focused on by Robertson are prospective parents seeking ARTs rather than the wage earners, merchants, and landowners envisioned by Smith. Yet, very much like Smith, who deemed “subversive” any public measure directed to restrain “natural liberty,”¹⁰⁸ Robertson deems “substantially harmful” any effort to limit a couple’s “procreative liberty.”¹⁰⁹ Thus, Robertson rests his essentially classical economic model of individual choice upon the moral platform of individual liberty, one that fully complies with Smith’s tenet that when individual agents are left to themselves, they will act rationally to maximize their respective interests while simultaneously maximizing the interests of their community.

Smith’s centuries old argument of the identity of individual and social interests has a more forceful ring than those offered by many writers today, say, Thomas Murray, who lashes out at the invisible hand argument expounded by Robertson in his treatment of procreative autonomy in following terms:

[P]rocreative liberty has difficulty summoning the ethical will to curb the indulgence of almost any parental whim ... Choice and control are to be valued, but not limitlessly, and not as decisive moral panaceas. Choice is not the universal moral solvent, dissolving all moral dilemmas. We should turn first to that which shapes our lives and gives them meaning, and especially to those enduring relationships of mutual caring that grow between parents and children. Those relationships occupy crucial places in the

¹⁰⁸Smith ([1776]1976: Book IV:208).

¹⁰⁹Robertson (1994:41).

grand tapestries of images and narratives that depict our riches and fullest images of human flourishing, as well as human failure, cruelty, and misery. When we avert our gaze from those tapestries, we blind ourselves to what ought to be our starting point for thinking insightfully about ethical issues in creating children.¹¹⁰

Murray thus manifests a downside inherent in many ethical discourses, which entails the invoking of a presumably universal hypothesis beyond verification. The disconcerting result of this methodological stance, as discussed at some length earlier, is that arguments developed along deductive/aprioristic lines seldom offer substantial epistemological value since they hardly ever transcend the substantiation of their premises. In Murray's argument, too, an overriding precept hovers over the entire discussion, namely that procreative technologies are unnatural, artificial interventions and thus deserve to be dumped "like the cents column on income tax returns."¹¹¹

The economic/utilitarian overtone of the procreative liberty argument has thrown off many bioethicists besides Murray. To name just two more, Laura Shanner blames it for depicting the process of the conception, gestation, and birth of one's offspring as the acquisition of a "product"¹¹² and Maura Ryan censures it for giving rise to the right to manipulate eggs, sperm, and embryos to attain selfish results, to prevent implantation or terminate gestation in the face of

¹¹⁰Murray (2002:45).

¹¹¹Murray (2002:41).

¹¹²Laura Shanner, "The right to procreate: When rights claims have gone wrong," *McGill Law Journal* 40 (1995:859).

undesired outcomes, and to enlist the aid of collaborators outside the family unit—in short, for totally revamping the meaning of being a parent in the conventional sense.¹¹³ The importance of these arguments from the point of view of this work is that they serve to reveal the fact that, in one form or another, ethical considerations do enter discussions concerning ARTs even when they have been cast against an unmistakable pure-economic background, such as was done by Robertson.

This inevitability was not lost on the founders of economic science, who had their academic training in moral philosophy. Most modern commentators construe Smith's *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776) as a document famously declaring the divorce of economics from moral philosophy. These observers overlook the fact that Smith cast that work squarely against the backdrop of moral philosophy. To Smith, self-interestedness—or “prudence,” as he called this natural human propensity in *Moral Sentiments* (1759)—is a virtue rather than a vice. In Smith's view, prudence does not enjoy the same rank as sympathy, propriety, justice, merit, and duty. Rather, it appears at a lower echelon of moral sentiments along with vigilance, circumspection, temperance, constancy, and firmness. This lower-level moral sentiment is readily sacrificed if and when it conflicts with a higher-level virtue.¹¹⁴ The same notion remains in the background of *The Wealth of Nations*, which is essentially an

¹¹³Ryan (2001:97).

¹¹⁴A. Smith, *The Theory of Moral Sentiments*, D. D. Raphael and A. L. Macfie (eds.), Oxford: Oxford University Press ([1759]1976:§ VII.i.3.15).

attack on the mercantilist system and call for free trade rather than a eulogy to egoism. Indeed, it presents a veritable moral framework promoting reciprocity or commutative justice and an effective remedy for the alienating consequences of the prevailing industrial and commercial practices.¹¹⁵

Jeremy Bentham and his followers, especially J. S. Mill, while disagreeing that human beings naturally possess morally or ethically relevant traits, still believed that individual citizens adopt socially appropriate conduct, even if only for fear that they would otherwise be subjected to measures that might be harmful to them. This notion figured centrally in Bentham's utilitarian construct. In Bentham's own words,

Nature has placed mankind under the governance of two sovereign masters, *pain* and *pleasure*. It is them alone to point out what we ought to do, as well as to determine what we shall do. On the one hand the standard of right and wrong, on the other the chain of causes and effects, are fastened to their throne. They govern us in all we do, in all we say, in all we think: every effort we can make to throw off our subjection, will serve but to demonstrate and confirm it ... The *principle of utility* recognizes this subjection, and assumes it for the foundation of that system, the object of which is to rear the fabric of felicity by the hands of reason and law ... By the natural constitution of human frame, on most occasions of their lives men in general embrace this principle, without thinking of it; if not for the ordering of their own actions, yet for the trying of their own actions, as well as of those of other men.¹¹⁶

¹¹⁵J. E. Alvey, "A short history of economics as a moral science," *Journal of Markets and Morality* 2 (1999:58).

¹¹⁶Bentham ([1789]1961:§1). Emphases in the original.

If one follows Bentham's argument, one discerns in it the notion that the reason individuals adhere to socially acceptable conduct is not because there exists a natural identity of individual and social interests. Rather, it is because individuals who fail to shirk socially unacceptable conduct would bring undesirable consequences upon themselves. As such, a measure of dissonance normally accompanies the reconciliation of the spheres of interests at the individual level. The only way to minimize this disutility is to change the economic, social, legal, and religious environment in such a way that individuals' hedonistic impulses are directed toward more socially valued objectives. Bentham did not prescribe any particular reform agendas in this regard. It was J. S. Mill who explicated how people ought to behave in morally acceptable ways in societies in his 1834 pamphlet, *The Proposed Reform of the Poor Laws*, 1848 textbook, *Principles of Political Economy*, and definitive 1859 essay, *On Liberty*. The composite notion gleaned from these works is that governments should go beyond the provision of constricted amounts of public services and undertake any activity that would generate net utility. Political economy provides the necessary knowledge base for the formulation and implementation of the latter kinds of appropriate government policies, since it is not an abstract science, but a value-driven scholarly vehicle to promote the wellbeing of the individual in society.

Ethical and economic considerations thus remained intertwined throughout the classical period of political economy, from Smith and Malthus to Ricardo and Mills, and parted ways only at the last quarter of the nineteenth

century in the aftermath of the mathematization of human behavior, inaugurated by Stanley Jevons and expanded by Francis Edgeworth and Alfred Marshall. This transformation, dubbed as the marginalist revolution,¹¹⁷ effectively excised moral philosophy from political economy, now dubbed Economics.

The conduct of the Economic Man reborn in the 1870s is wholly subordinated to the applicable rules of optimality. Classical political economy had not made such a stringent assumption, considering Economic Man as an agent operating in an expansive decisional milieu where political, social, and legal parameters played as important a role as economic ones. As such, the older model of Economic Man provided a more descriptive generalization of individual conduct as opposed to the newly developed one, though it lacked woefully in predictive power by comparison. The *neoclassical* Economic Man, by contrast, was equipped with considerable predictive prowess (thanks to the marginalist operational framework developed and perfected during the preceding decade), but was devoid of any other behavioral attributes besides rationality and self-interest.

Economic Man underwent yet another transformation in 1960s. This new human model emerged as an agent capable of determining courses of action that are consistent with economically *as well as* politically dictated modes of conduct.

¹¹⁷Marginalism stemmed from the notion that a commodity has different utility to different individuals. As a rule, the utility of the last unit (marginal utility) of a commodity varies inversely with the number of units available to a person. In other words, commodities have diminishing marginal utilities (*i.e.*, if I already have too many music CD's, I will attribute less utility to an additional CD that I contemplate buying). The consumer maximizes his or her total utility when the marginal utilities of all available commodities are proportional to their costs (*i.e.*, prices).

To this greatly enriched amalgamation, behavioral economists added another dimension, and cognitive scientists still another. In the ultimate synthesis, Political Economic Man has emerged as a characterization only procedurally circumscribed by the axioms of rationality and self-interest. As political economists introduced the relevant political and social customs and institutions into their theorizing, they have come to construe the conventional process of economic choice as a subcategory of the general problem solving process. Only in this particular decision environment do the necessary conditions of optimal decision-making prevail. In other areas, agents would seek solutions that are good enough for them under the applicable endogenous and exogenous variables. In latter decision environments, the axiom of perfect rationality is replaced with the concept of bounded or procedural, not abstract or substantive, rationality whereby economic agents would employ personally-derived rules of thumb (heuristics) to govern their behavior rather than such universal and impersonal decision rules as cost minimization or utility maximization.¹¹⁸ These decision protocols exist inside human heads and are subject to change with every change affecting human beings. It is for this reason that attempts to predict and prescribe human economic behavior through deductive inferences must fail and have failed,¹¹⁹ as

¹¹⁸See Simon's *Models of Man*, New York: John Wiley and Sons (1957), "From substantive to procedural rationality" in S. Latsis (ed.), *Method and Appraisal in Economics*, Cambridge: Cambridge University Press ([1976]1979), *Administrative Behavior: A Study of Decision Making Process in Administrative Organization*, New York: Macmillan (1947);,and, with A. Newell, "Human problem solving: The state of theory," *American Psychologist* 26 (1971:145-159).

¹¹⁹ Simon ([1976]1979):83.

manifestations of procedural logic have found a voice not only in economic,¹²⁰ but also legal analysis.¹²¹

Despite these encouraging developments, the ethical dimension still remains largely outside standard economic analysis. In fact, the rift that opened up in the 1870s between efficiency and equity has deepened. It is a pervasive belief among economist scientists today that the equitability and efficiency of an individually or socially significant measure or policy is a matter of tradeoff. To wit, while it is true that if the fiscal authority taxes the rich and diverts the collected revenue to the poor, the eventual income distribution will be more equal, hence fairer, it is equally certain that the total income to be distributed will fall in the next round, since the rich will not work as hard as before.¹²² Fortunately, some contemporary political economists perceive equity as a necessary condition for an efficient economic equilibrium and assert that in case we must choose between efficiency and equity, as we often must do, our choice should be for equity. To elaborate on this point, Andrew Schotter writes:

¹²⁰As demonstrated by Tversky and Kahneman (1974); Kahneman and Tversky (1979); and Thaler (1980), mentioned earlier.

¹²¹See R. Coase, "The problem of social cost," *Journal of Law and Economics* 3 (1960:1-44); R. A. Posner, *Economic Analysis of Law*, Boston: Little Brown and Company (1972) and *The Economics of Justice*, Cambridge, Massachusetts: Harvard University Press (1981), as well as O. D. Jones, "Time-shifted rationality and the law of law's leverage: Behavioral economics meets behavioral biology," *Northwestern University Law Review* 95(2001:1142-1143).

¹²²A. Schotter, *Free Market Economics: A Critical Appraisal*, New York: St. Martin Press (1985:29).

Assume that two starving people simultaneously find a cake. Each needs at least 20 percent of the cake in order to live. How are they to divide it? One way is to give all the cake to one person and none to the other. While seemingly unfair or inequitable, this is an efficient solution or Pareto-optimal way to split it—there is no other split that *both* people would prefer. Unfortunately, doing this guarantees that one person will die. Another way to split the cake is to give 45 percent to one person and 45 to [the] other and to throw away 10 percent. This outcome is not efficient because 10 percent of the cake is wasted, yet most people would agree that it is preferable since both people are guaranteed life. In other words, just because an outcome is efficient or Pareto-optimal does not mean that it is desirable. Non-optimal worlds that are equitable may be more pleasant places in which to live.¹²³

Despite the foregoing argument, ethical considerations by and large continue to lie outside the realm of economics, notwithstanding the efforts of some ethicists to infuse ethics into economic analysis,¹²⁴ and the willingness of some economists to avail themselves to this methodological transformation.¹²⁵ It is on this note that we turn to explore the possibility of integrating ethical considerations more centrally in a political economic model of the utilization of ARTs enriched with relevant ethical parameters.

C) THE ETHICAL PERSPECTIVE AND ARTS. In North America, bioethics has emerged mainly from the discipline of philosophy and, to a lesser extent, religion; as for the social sciences, particularly economics, they have played almost no role

¹²³Schotter (1985:29-30).

¹²⁴See Etzioni's *The New Golden Rule: Community and Morality in a Democratic Society*, New York: Basic Books (1997) and *The Moral Dimension: Toward a New Economics*, New York: Free Press (1988).

¹²⁵See Sen's *On Ethics and Economics*, Oxford: Blackwell Publishers, Ltd (1990[1987]).

in its development.¹²⁶ In fact, when the bioethical discourse occasionally refers to social sciences, especially economics, it is normally to point out some notions specific to these disciplines that seemingly trivialize moral deliberation. It is because of this concern that even those bioethicists expressly interested in maximizing and equalizing satisfaction from access to health care consciously eschew the tailor-made operational framework offered by economic science. To illustrate, Norman Daniels, in his attempt to develop a theory of allocation of society's health care resources in a more efficient and equitable manner, categorically repudiates economic methodology.¹²⁷ He criticizes the economic construct for clustering all human needs under one rubric, without duly recognizing "that there is something especially important about health care, and that some kinds of health care are more important than others."¹²⁸ Finding a substantive difference between "needs" and "desires" in the demand for health care, Daniels exhorts fellow bioethicists to concentrate solely on the former, warning that the desires emanating from the subjective valuations of disparate individuals preclude a common denominator for "objective interpersonal measure[s] of satisfaction" of this especially important social good.¹²⁹ In

¹²⁶D. C. Wertz, "Prenatal diagnosis and society," in Royal Commission on Reproductive Technologies, *New Reproductive Technologies: Ethical Aspects*, Minister of Supply and Services Canada: (1993:223), referring to R. C. Fox, "The evolution of American bioethics: A sociological perspective," in *Social Science Perspective on Medical Ethics*, G. Weisz (ed.), Boston: Kluwer Academic Press (1990).

¹²⁷N. Daniels, "Health care needs and distributive justice," J. L. Nelson and H. L. Nelson (eds.), *Meaning and Medicine: A Reader in the Philosophy of Health Care*, New York: Routledge (1999:223).

¹²⁸Daniels (1999:215).

¹²⁹Daniels (1999:218).

Daniels's opinion, only needs, and not desires, are "*objectively ascribable*, [*i.e.*], we can ascribe them to a person even if he does not realize he has them and even if he denies he has them."¹³⁰ Additionally, only needs are "*objectively important*, [*i.e.*], we attach a special weight to claims based on them in a variety of moral contexts, and we do so independently of the weight attached to these and competing claims by the relevant individuals."¹³¹ As such, Daniels in one stroke excises from his analysis not only the concept of subjective valuation, but a host of relevant insights offered by economic science, including the incomparability of interpersonal utilities, the nature of social goods, and the attendant problem of free-riding discussed in the next paragraph. These omissions serve only to impoverish Daniels's argument, which begins and ends with the exhortation that health care resources be allocated in accordance with the "moderate claims" of "typical members" of society nurturing "modest tastes." As for the claims of those who happen to espouse "extravagant" tastes for health care, Daniels deems it "reasonable to hold them *responsible* for their own low level of satisfaction."¹³² One would naturally extrapolate from this conclusion that, say, a lesbian couple demanding ARTs should be debarred from consuming this social good since their "desire" for that commodity would reveal an "extravagant taste" *vis-à-vis* the *bona fide* "need" of an infertile heterosexual couple driven by a "modest preference." The argument thus shows how a bioethical perspective detached

¹³⁰Daniels (1999:218). Emphasis in the original.

¹³¹Daniels (1999:218). Emphases in the original.

¹³²Daniels (1999:223). Emphasis in the original.

from cognate notions in social sciences could lead its proponent to a questionable quest of developing a theory of allocation of health resources for the benefit of “individuals who are ‘normal, active, and fully cooperating members of society.’”¹³³

Ironically, Daniels could have achieved his express goal of “maximizing and equalizing satisfactions” in an environment where “extravagants seem to have a greater claim on further distributions of social resources than moderates”¹³⁴ in a much more compelling fashion had he made use of the political economic methodology. For, it happens to be a basic political economic tenet that the subjective preferences of all members of society fully reflect in the calculation of maximum welfare. The only condition is that they effectively reveal the respective utility they attribute to the social good in question. Pareto optimality would be obtained no matter whether one member places a “moderate” and another an “extravagant” claim on the social good in question, as long as neither member shirked from paying the corresponding price. Accordingly, if a community did not reach Pareto optimality, it is not because its members had *different* wants, interests, needs, desires, or hopes: it is because they were unwilling to contribute to the cost of social goods in accordance with their respective subjective valuations. Put differently, people will be motivated to act as free riders (that is, will not reveal the true utility social goods would bestow on

¹³³Daniels (1999:224), referring to Rawls’s unpublished lecture, “Responsibility for Ends” (date not given). Emphasis in the original.

¹³⁴Daniels (1999:223).

them for fear of inviting the commensurate fee, duty, or tax), reasoning that, under the provisions of a democratic political covenant, nobody could be excluded from consuming the social good in question.

Under these circumstances, if we want to maximize and equalize satisfaction from a social good, as does Daniels, we must induce the members of society to reveal their true subjective valuations rather than summarily precluding a social segment from benefiting from its consumption. To achieve this result we must refer not just to economics, but also to anthropology, sociology, psychology, and political science in order to effectively discern, elicit, measure, contextualize, and influence members of society to reveal their subjective valuations and to induce them to pay the commensurate price. Thus, the exclusion of any social class, say, lesbian couples, from the consumption of ARTs would disconcert any counterpart of Daniels's grounded in social sciences. We have seen that political economists would reject such a proposal pointing out that these couples have openly expressed their subjective valuations and have demonstrated their willingness and ability to pay for this particular social good, no matter how extravagant their tastes may seem.¹³⁵ Sociologists and political scientists (especially those who espouse feminist causes), will oppose this rationalization for equally compelling reasons. Sociologists will admonish Daniels for representing the community as a mere aggregation of separate, autonomous beings rather than a collection of interconnected parts, each with a valid claim on

¹³⁵ Assuming, naturally, that these couples are deprived of insurance coverage and must pay the cost of treatment from their own personal budgets.

health care resources, and political scientists will find in Daniels's conclusion a deliberate effort to degrade the importance of health care for the multitudes in order to preserve the privileges of "normal, active, and fully cooperating members of society."

The disconnection between bioethics and economics becomes especially palpable in the discussion involving ARTs. As a rule, such key issues as quality of life, the degree of "wantedness" of pregnancy, risk, finances, and so on are tackled in bioethical discourse without referring to economic logic. But this is not to say that the bioethical discussion concerning ARTs is a monolithic text. There exists a series of moral perspectives applicable to ARTs hinging upon such disparate views as secular morality, religious tenets, contractarianism, natural law, moral rights, and utilitarianism. To make matters more complex, most bioethicists concerned with ARTs, while following the guiding principles of their preferred ethical framework, only occasionally specify these tenets or explicate their nature. In the rare instances in which a bioethicist does so, the explication usually refers to the values of society at large rather than those of the particular social segment with which the bioethicist has affinity. In other words, there exists a series of moral convictions espoused by different social clusters and promoted by different discussants. The data obtained by the Royal Commission on New Reproductive Technologies (RCNRT) reveal that the seventy-five respondents identified themselves with one of seven social and professional communities, each subscribing to different sets of guiding principles reflecting the concerns of their

respective subpopulations. The seven groups and the principles most frequently endorsed by each are shown below:

- 1) *Medical community*: individual autonomy; beneficence; and, justice.
- 2) *Family, religious, and pro-life groups*: respect for human life; and, protection of family as the proper environment for the child.
- 3) *Women's groups*: respect for women's reproductive autonomy; non-discriminatory access to ART; and, non-commercialization of reproductive services.
- 4) *Alternative and community health and social services*: respect for individual choice; cost-effective health care; and, public participation and accountability for reproductive health care policy decisions.
- 5) *Cultural/ethnic groups*: equality in access to ART.
- 6) *Legal and human rights groups*: informed consent; and, protection of the child's best interest.
- 7) *Representatives of people with disabilities*: equality in access to ART; and, individual autonomy.¹³⁶

It follows from the above information that it would not be warranted in the explication of ARTs to refer to a single ethical framework or to create one that would encompass all these concerns. This is a rather disconcerting eventuality, for, a comprehensive ethical theory would have ensured consistency among the many recommendations concerning ARTs and would have promoted informed debate, since readers disagreeing with a given recommendation would have been able to determine where the disagreement arose—at the level of a fundamental moral perspective, in the application of that perspective, or from the different

¹³⁶W. Kymlicka, "Approaches to the ethical issues raised by the Royal Commission's mandate," in *New Reproductive Technologies: Ethical Aspects*, Royal Commission on New Reproductive Technologies, Volume 1 of the Research Studies, Ministry of Supply and Services Canada (1993:6) Italics added.

assumptions or interpretations made by the researcher.¹³⁷ This grand ideal has long been abandoned due to the obvious methodological difficulties. Instead, what we witness are interminable arguments about which ethical theory would be most appropriately applicable to the analysis of ARTs, with no solution in sight.

Most bioethicists favor a particular moral perspective—Utilitarianism, Deontology, Natural Law, Contractarianism, Ethic of Care, Mutual Advantage, or what have you—and propose that their preferred ethical theory must constitute the heart of any discussion involving ARTs. Others, not finding any one of these frameworks alone appropriate for their purpose, question whether a workable synthesis can be formulated by culling some selected precepts together. The authors of the RCNRT Report belong to this group of investigators. The Commissioners, after determining the impossibility of integrating the first principles of each of these theories into an ethical theory applicable to ARTs, identify seven mid-level principles that, according to them, could be reconciled for that purpose. These secondary principles are: (1) Individual Autonomy; (2) Equality in Access; (3) Appropriate Use of Resources; (4) Respect for Human Life; (5) Accountability; (6) Protection of the Vulnerable; and, (7) Non-Commercialization.¹³⁸ Each of these principles is compelling and uncontroversial. Who can argue, for example, that the vulnerable should not be protected or that resources should not be used appropriately? The problem is that when these

¹³⁷Kymlicka (1993:7).

¹³⁸Refer to pp. 17-25 of RCNRT Report for a discussion of these principles.

principles are taken *in conjunction* they produce serious conflict. One reason for this outcome is that the roots of some of these principles are grounded in irreconcilable philosophical venues. Consider Individual Autonomy and Equality of Access, for instance. The first principle dictates that rational human beings base their choices on independent deliberations. The corollary of this premise is that different individuals with different valuations will be willing to pay different prices. Equality of Access, conversely, postulates that since all individuals are alike, all who find themselves in the same situations should be treated alike. To give an example, two taxpayers with equal economic capacity should pay the same amount of tax.¹³⁹

J. S. Mill fully explored the principles of individual autonomy and equality, concluding that the independence of “man ... in conduct [that] concerns merely himself is, of right, absolute.”¹⁴⁰ Mill based his two-fold discussion on the views of Smith and Bentham, who saw individual autonomy as the *primum mobile* in the reconciliation of personal and communal interests. Mill noted that Smith and Bentham differed in one important respect, namely that the former saw an identity while the latter a divergence between personal and collective goals. The corollary of Smith’s premise, according to Mill, would be that the state should refrain from intervening in the economic scene since personal and social interests are by definition one and the same. We have seen that Bentham invited

¹³⁹The flip side of this definition of equality is that individuals with greater economic capacity should pay a higher tax.

¹⁴⁰*On Liberty*, Ch. I, reprinted in W. Ebenstein (ed.), *Great Political Thinkers: Plato to the Present*, New York: Holt, Rinehart and Wilson ([1859]1961:556).

state intervention to ease the continual conflict between private and public interests. But he failed, in his turn, to come up with a utilitarian agenda stipulating the conditions under which public policy would serve to maximize the social interest.

Mill's perception of Individual Autonomy reconciles the two views. He proposes an economic exchange environment generally unencumbered by political and social regulation. However, there are some needs specific to civilized societies—such as public health, public education, and protection from non-self-inflicted poverty—that call for state intervention. The reason such needs remained unmet in society was that entrepreneurs were unwilling to invest their resources into these inherently unproductive areas, that is, areas where they discerned no prospect for commensurate profit. Accordingly, these tasks fell on the shoulders of the fiscal authority, whose explicit mandate it is to determine how much public revenue should be channeled into such areas.¹⁴¹ As such, Mill upheld Individual Autonomy as a moral stand resting on entirely economic grounds, unlike Montesquieu, Voltaire, or Rousseau who employed it as a counterweight against authoritarianism emanating from historical realities.

¹⁴¹Mill thought the utilitarian calculus would be fully adequate in the handling of the problems associated with the allocation of public funds to social projects. To illustrate, public assistance should be given to the poor provided that they agreed to live in workhouses where the living conditions would be kept deliberately inferior to those of the most poorly paid laborers. Mill explained his utilitarian calculus in following terms: "The condition of a pauper must cease to be ... an object of desire and envy to the independent labourer. Relief must be given; no one must be allowed to starve; the necessities of life and health must be tendered to all who apply for them; but ... relief must be given only in exchange for labour, and labour at least as irksome and severe as that of the least fortunate among independent labourers" ("The proposed reform of the poor laws," *Monthly Repository*, 8 (1834:361).

Kant took a different track in this connection. Approaching the issue from a purely philosophical perspective, rather than economic (like Mill) or historical (like the *philosophes* mentioned above and discussed below), he based his argument in *Grundlegung zur Metaphysik* (1785) on the observation that human beings transcend any presumably universal moral laws and subscribe only to those that they develop from within, and which they cherish forever. In Kant's observation, human beings are endowed not only with the faculty of thought, but also with the faculty of having thoughts about thoughts, which ability they put to work through introspective and reflective processes to determine their own universal laws. Accordingly, an individual will repudiate an officially sanctioned stature, norm, or convention if it disagrees with his or her own law. As such, Kant's view is reconciled with J. S. Mill's in one respect: Individual Autonomy is not the product, but the producer of the moral fiber of society.

As for Equality in Access, early political theorists presented differing views about it. Montesquieu upheld nobility and aristocratic privileges as a bulwark against the abuses of absolute monarchy while Voltaire preferred the hereditary nature of absolute monarchy over the acquired privileges of aristocracy. Rousseau's view was ambivalent in this regard. Indeed, while depicting individuals as inherently brutish creatures beset by pride, arrogance, domination, and materialism in his *Discourse sur l'origine de l'inégalité* (1754), he exhorted the need for more equal participation in *Du contrat social* (1762).

Yet, on balance, Rousseau's vision of social progress agrees with an important consequence of the principle of equality in that this principle, in whatever form that it may appear, would urge members of society to change, rather than acquiesce to, the moral and political institutions embedded in the *status quo*. Two centuries later, the principle of Equality in Access reappeared in the writings of Rawls as an eminent moral stand requiring the public authority to tackle social and economic inequalities embedded in the *status quo* in such a way that the least advantaged are given the fullest benefit to offset the initial inequality of opportunity.¹⁴² As such, society has come to be construed as an organic entity, distinct from that of its members and with a life of its own, which should continually evolve to make itself relevant with respect to the needs and aspirations of its individual members.¹⁴³ The authors of the RCNRT Report agree with this view, although they do not explicate how this principle could be reconciled with the principle of Individual Autonomy, also espoused by the Commission.

A reconciliation of some other principles listed in the RCNRT Report is likely to be even more problematic. For one thing, many critics subscribing to the conservative or feminist approaches have categorical, aprioristic objections to ARTs, transcending any and all mid-level principles advanced by the members of

¹⁴²Rawls ([1972]1979:165). Rawls is not the originator of this concept, whose provenance goes back to A. C. Pigou, *Economics of Welfare*, London: Macmillan (1920) and "Some aspects of the welfare state," *Diogenes* 7 (1954), reprinted in Ebenstein (1961:838-843). Also Richard Musgrave elaborated on horizontal and vertical forms of equity in *Theory of Public Finance: A Study of the Public Economy*, New York: McGraw-Hill (1959).

¹⁴³The thought is in Rawls ([1972]1979:169).

the seven interest groups listed in the Report. Conservative objections stem from the overriding concern that assisted reproduction will radically alter traditional family relationships, and feminist objections from the perceived inevitability that assisted reproduction will empower men to further subjugate women.¹⁴⁴ These axioms may not provide *prima facie* justification to conservative and feminist objections against ARTs, but then the same may hold for liberal arguments in favor of ARTs. Yet, one point that is common to all these discussions is that individuals and couples seeking ARTs routinely take ethical issues into consideration when making their choices concerning these remedies, though prospective users of ARTs do not necessarily feel bound by their private ethical deliberations. This occurs because individuals treat each pregnancy differently, especially when it comes to considering assisted reproduction, when they have to grapple with myriad problems. Even for the most cognitively endowed decision-makers, the reconciliation of their personal concerns with those of society becomes a daunting task. Moreover, individuals or families who have decided to pursue assisted reproductive services in the aftermath of their deliberation on competing alternatives must make subsequent moral decisions from the onset of the therapy to its conclusion and beyond. How can ethical theories and approaches help prospective users of ARTs in making informed choices in such an intense decisional continuum rife with substantial costs and rewards?

¹⁴⁴As argued by L. M. Purdy, "Assisted reproduction," in H. Kuhse and P. Singer (eds.), *A Companion to Bioethics*, Oxford: Blackwell Publishers, Ltd. (2001:164).

At the first glance, **the case approach** appears to offer a fitting operational framework in the determination of the appropriateness of ARTs to meet private and public ends. The very rubric, “*case approach*” imparts the sense that this ethical perspective will treat each case on its own merits, giving the due importance to all relevant circumstances impinging upon that unique event. With its trademark *modus operandi* that works from the bottom up, this ethical approach helps the investigator to discern the moral rule that is indicated for the case at hand. As such, it belongs to the particularist school of bioethical theory, like feminism or pragmatism, whose defining characteristic is to challenge any comprehensive approaches, regardless of whether they are based on a grand moral principle (such as beneficence, autonomy, or justice) or a moral theory (such as utilitarianism or Rawlsian contractarianism), which they evoke in the treatment of specific, concrete dilemmas.¹⁴⁵ But before hastening to settle on this approach as a propitious ethical perspective in the analysis of ARTs, let us scrutinize its parameters a little more carefully.

According to Arras, the contemporary casuist subscribing to this ethical perspective:

must first provide a robust and detailed description of the case, while fitting it under a certain rubric ... [which] will usually include an inventory of the likely moral reasons or ‘maxims’ ... or middle-level principles triggered by situations of this type, such as ‘Parents should normally make medical decisions for their

¹⁴⁵J. D. Arras, “A case approach,” in H. Kuhse and P. Singer (eds.), *A Companion to Bioethics*. Oxford: Blackwell Publishers, Ltd. (2001:106).

children' and 'Medically futile treatment need not be offered.' The next step is to fit the case as described into a *taxonomy*, a structured reservoir of responses to similar cases that contains various *paradigm* cases of conduct judged to be manifestly right or wrong, virtuous or shameful. ... The casuist then tries to locate the new problematic case on a continuum of cases stretching from a paradigm of acceptable conduct at one end of the spectrum to a paradigm of unacceptable conduct on the other end ... and to determine where along this spectrum of paradigmatic cases the present case falls.¹⁴⁶

It now emerges that the case approach boils down to an effort to identify a grand, precedent-setting case against which the case under consideration may be compared and contrasted. The prospect of raising a *deus ex machina* in the analysis of a concrete human dilemma turns this professedly "case" oriented approach into just another principle-driven ethical construct, regardless of whether its moral calculus has started from the bottom to reach the top rather than the other way around. For, the judgment is rendered by comparing a bedside case against a superordinate moral standard embodied in a paradigmatic case, thus affording to the casuistic discourse a palpably prescriptive characteristic. The possibility always exists that the absolute rule that has been reached at the end of the bottom-up moral calculus may condemn a human action as intrinsically wrong even when the involved agents' intentions were honorable or when their choices resulted in a "right" outcome, however defined. To illustrate, my refusal to donate one of my kidneys to my aged grandmother would be deemed a breach of the absolute rule of beneficence or non-maleficence regardless of my informed consideration of her rapidly and irreversibly declining health. As such, the case

¹⁴⁶Arras (2001:107-108). Emphases in the original.

approach reverts to a perspective with an inherently conservative and regressive bent, as it reflects the opinions, values, and conventions espoused of a pivotal, not to say dominant, segment of the community.

It has already been implied in the previous section that **the absolute rule approach**, too, would be out of place when applied to concrete ethical problems, especially within the context of ARTs. The distinguishing characteristic of this approach is that it imposes some overarching, exceptionless moral rules upon particular cases. Some of these rules may come from the Mosaic Code (You shall not kill), Catholic doctrine (You shall pay your tithe), or Calvinist teachings (You shall be saved provided that you have worked hard and demonstrated sobriety, thrift, abstinence, and justice), and so on. Others are derived from secular or mixed dogmas. To illustrate, Aristotle established in *Ethics* that a sense of justice must reign over all other laws. Roman authors subjugated civil statutes to natural law. In Cicero's formulation, natural law is defined as the True Law, one that conforms to nature and is entrenched in our hearts, like piety, gratitude, vengeance, respect, and truth.¹⁴⁷ Implicit in these definitions is the conviction that there is a moral order of laws, which point is reiterated by Gaius:

¹⁴⁷P. Foriers and C. Perelman, "Natural law and natural rights," in P. P. Wiener (ed.), *Dictionary of the History of Ideas: Studies in Selected Pivotal Ideas*, vol. III, New York: Charles Scribner's Sons (1973:16), referring to *De republica* (3.22.33) and *De inventione* (2.53.161).

All the civilized peoples govern themselves partly through the law common to all peoples, and partly through the law peculiar to themselves, for when a nation creates a law, it becomes its own 'civil law,' while the law established by natural reason (*naturalis ratio*) among all men is observed equally everywhere and is called the law of all people (*lex gentium*), obligatory on all nations."¹⁴⁸

Saint Augustine picked up on the same idea deeming submission to Divine Will a moral obligation for every member of the City of God, where organic matter is held superior to inorganic and the mind to the senses. Thomas Aquinas' moral philosophy was also absolutist in a similar way: the moral rules expounded by God must be obeyed without exception.¹⁴⁹ Similarly Tommaso Campanella, in *La città del sole* (1602), depicted society as devised by God for the benefit of his rational creatures.

Not all absolutists invoke God's will. As we have seen above, Kant's ethical rule of "categorical imperative," for one, is founded not on religion, but on the individual's inner reason, free will, and sense of duty. Kant envisioned human beings as natural entities (*noumena*), not artifacts (*phenomena*). As such, human beings are not bound by any exogenous imperatives. These moral creatures are capable of determining what is good and what is bad, both for themselves and for

¹⁴⁸Foriers and Perelman (1973:17), referring to Gaius's *Institutes*, Book I (*Digest*. I.1.1;9).

¹⁴⁹J. Boyle, "An absolute rule approach," in H. Kuhse and P. Singer (eds.), *A Companion to Bioethics*. Oxford: Blackwell Publishers, Ltd. (2001:72).

their cohorts, and of acting in accordance with their convictions. They uphold their personal moral principles without a concomitant inner conflict, even in the face of adversity, and it is this eventuality that affords personal values the characteristic of universal laws.

The Kantian absolute rule approach envisages two levels of principles. In the first echelon are grounded some comprehensive moral rules upon which narrower moral precepts are founded. The latter principles, usually referred to as moral precepts, are exceptionless. This must be so because a narrow moral precept embodies a specific decision rule applicable to a certain situation. For example, if you observed that a reproductive endocrinologist deceived a patient by minimizing the attendant risks of an ART procedure, you should have no doubt that the physician has violated the moral precept: "I will [only] prescribe regimen for the good of patients ... and never do harm." However, a more pivotal moral rule upon which a given moral precept may be hinged, may allow exceptions. This distinction is a necessary consequence of the all-encompassing nature of moral laws. To illustrate, the moral rule: "One should not lie" may allow an exception in some dire situations, such as to give comfort to someone who is dying. Kant fully elaborated on this demarcation, distinguishing between categorical and pragmatic rules of ethics, and ascribing the latter to those instances in which a human being proceeds to satisfy an entirely subjective goal. In such cases, the pragmatic imperative of prudence takes precedence, actually requiring the human being to mobilize all his or her skills and natural inclinations

to reach the desired goal.¹⁵⁰ The interplay between subjective/prudential considerations and objective/moral ones is widely observed in human behavior, which results in serious ethical consequences. Boyle elaborates on this point:

The contrast between precepts and other absolute rules points to the sense in which precepts might be distinctively and interestingly exceptionless: a precept is absolute if and only if it prescribes that an action of a certain kind should not be done and that its being of that kind guarantees that no further ... description of the action and its circumstances will remove its impermissibility. In other words, a negative precept, a prohibition of a kind of action, is absolute when one knows not only that the action as one has characterized it is wrong, but also that anything else one might discover about that action, its circumstances and consequences will not alter that negative evaluation of the action.¹⁵¹

The above explication gives rise to a unsettling outcome in that it often becomes difficult to distinguish a moral rule, which allows exceptions, from a moral precept, which does not. Due to the fuzzy boundary between the two categories of moral principles, many bioethicists often resort to the casuistic method to determine whether an observed action ought to be governed by a moral absolute. To illustrate, should the reproductive endocrinologist's exaggeration of the odds in the above example be relegated to a moral precept, "You shall not harm," or to a moral rule, "You shall not lie?" Thus, a natural interface forms between the case and the absolute rule approaches, with the accompanying

¹⁵⁰P. P. Wiener, "Pragmatism," in P. P. Wiener (ed.), *Dictionary of the History of Ideas: Studies in Selected Pivotal Ideas*, vol. III, New York: Charles Scribner's Sons (1973:555), referring to the Introduction of Kant's *Critique of Judgment*.

¹⁵¹Boyle (1998:73-74).

controversy that the courses of actions dictated by either approach may closely reflect the imperatives of the prevailing social institutions. If this criticism has merit, then both ethical stands would do disservice to those segments of population that struggle to overcome the restrictions imposed on their autonomy, in this case on their deliberations concerning the appropriateness of physician-assisted reproductive remedies for themselves and the community.

Another exceptionless ethical perspective is **the utilitarian approach**. In its pure form, Utilitarianism (with capital initial), is the worldview according to which a human action is neither right nor wrong in and of itself. The rightness (or wrongness) of an action depends on whether it has contributed to (or subtracted from) general happiness. The conduct of behavior dictated by the principle of utility, as elaborated by Bentham, differs in a substantial way from the one required by principle of egoism expounded by Smith. To provide an example, egoism dictates that if a fire erupts in a building where your daughter is receiving a blessing from Mother Teresa and you can save only one person, you save your daughter. The principle of utility, conversely, would prompt you to save Mother Teresa, since by that action you are more likely to contribute to aggregate happiness.¹⁵²

¹⁵²The example is adapted from William Godwin's often quoted example involving the choice between a man's own mother and a "great man" (*Enquiry concerning Political Justice* (1793, 3rd ed., II:493), reprinted by Oxford, New York: Woodstock Books (1992).

In Bentham's theory, individual utilities (u_i) are additive (that is, they can be formulated mathematically as: $U = u_1 + u_2 + \dots + u_n$) and the appropriateness of a human act is measured solely from the point of view of how much utility that act has contributed to the sum. In this process of maximization, individuals' utilities are taken at their cardinal value, without assigning them any weights on the basis of any moral consideration. Bentham avers:

Sum up all the values of all the *pleasures* on the one side, and those of all the pains on the other. The balance, if it be on the side of pleasure, will give the *good* tendency of the act upon the whole, with respect to the interests of the *individual* person; in on the side of pain, the *bad* tendency of it upon the whole ... The same process is alike applicable to pleasure and pain, in whatever shape they appear, and by whatever denomination they are distinguished: to pleasure, whether it be called *good* (which is properly the cause of instrument of pleasure) or *profit* (which is distant pleasure, or the cause of instrument of distant pleasure) or *convenience* or *advantage*, *benefit*, *emolument*, *happiness*, and so forth: to pain, whether it be called *evil* (which corresponds to *good*) or *mischief*, or *inconvenience*, or *disadvantage*, or *loss*, or *unhappiness*, and so forth.¹⁵³

Bentham was aware that his hedonistic calculus would entail combining my happiness (apples) with yours (pears) into one big heap. Bentham summarily dismissed this criticism by remarking that: "Tis in vain to talk of [the problem of] adding quantities which, after the addition, will continue [as] distinct as they were before. [O]ne man's happiness will never be another man's happiness; a gain to one man is no gain to another; you might well pretend to add 20 apples to 20

¹⁵³Bentham ([1789]1961:520-521). Emphases in the original.

pears, which after you had done that could not be 40 of any one thing but 20 of each just as there was before. [The] addibility ... is a postulatam.”¹⁵⁴

The problem with the additivity of individual utilities led to a related criticism that Bentham never explained why some kinds of pleasure are obviously deemed more valuable than others although they do not yield greater pleasure. J. S. Mill addressed the question, stressing that these kinds of pleasures, such as virtue or compassion, are intrinsically good because they give rise to consequences that are good not only as a means, but also as a product. In other words, these pleasures are *qualitatively* more desirable.¹⁵⁵ Mill’s dichotomy gave rise to a particular strain of utilitarianism, elaborated by G. E. Moore at the turn of the twentieth century, which maintained that such things as truth, beauty, and love, are good in and of themselves, and that the famous utilitarian formula should be changed to “the greatest *good* of the greatest number.”¹⁵⁶ However, this amended theory of utilitarianism, dubbed Ideal Utilitarianism to distinguish it from Hedonistic Utilitarianism, still remained essentially faithful to its

¹⁵⁴G. J. Stigler, “The development of utility theory,” *Journal of Political Economy*, LVIII (1950), reprinted in *Landmarks in Political Economy*, Chicago: The University of Chicago Press (1962:384,10n), referring to a manuscript of Bentham’s cited by Élie Halévy, *La formation du radicalisme philosophique*, Paris: Germer Bailière vol III (1901:481).

¹⁵⁵Mill elaborated on these courses of action in various works, including “The Proposed Reform of the Poor Laws” (1834), *Principles of Political Economy* (1848), and *On Liberty* (1859).

¹⁵⁶Munro (1973):446. The idea was originated by Francis Hutcheson in three essays that were published in 1725, 1726, and 1728. See References. Hutcheson’s contributions in this regard will be discussed under the virtue ethic approach below and picked up again in the following chapter.

consequentialist roots, though the motives and intentions of individual agents figured more centrally in the production of efficacious outcomes.

The second revival of Bentham's theory is Rule Utilitarianism, according to which the test of rightness is not whether a human act would produce a better consequence than some other course of action, but whether it would lead to a better consequence if it took place within the framework of a generally accepted norm, such as justice, beneficence, respect for individual autonomy, or some combination thereof. As noted earlier, J. S. Mill defended in "The Proposed Reform of the Poor Laws" that compassion for the unfortunate would be an inherently worthwhile utilitarian rule in that "no one must be allowed to starve, [and] the necessities of life and health must be tendered to all who apply for them."¹⁵⁷ Mill similarly emphasized in *On Liberty* "other positive acts for the benefit of others, [such as] ... to give evidence in a court of justice; to bear [one's] fair share in the common defense or in any other joint work necessary to the interest of the society of which [one] enjoys the protection; and to perform certain acts of individual beneficence, such as saving a person's life or interposing to protect the defenseless against ill usage."¹⁵⁸

¹⁵⁷*Monthly Repository*, 8 (1834:361). See Note 141.

¹⁵⁸Mill, *On Liberty* (1859), in W. Ebenstein (ed.), *Great Political Thinkers: Plato to Present*, New York: Holt, Rinehart and Wilson (1961:557).

All in all, the proponents of Rule Utilitarianism believe that such morally superior and binding principles are likely to balance against the concrete utility ascribable to a certain individual choice or policy measure. To give an example, a physician may reject a lesbian couple's demand for access to ART convinced that good consequences would result from denying this request. The physician might take heed of the protocol prevailing in the medical community that prohibits such an infraction and consider the cost of the fallout in case he or she were to comply with the lesbian couple's request. The problem with this solution is naturally that depriving this couple from their perceived benefits of the ART cannot be judged a good consequence on its own merit, since it would conflict with the principle of justice, which would contribute more weightily to general good. So, after visiting the reflowering of Utilitarianism under the rubrics of Ideal and Rule Utilitarianism, let us return to the original roots and agree either with Bentham and Mill that justice can be derived from the maximization of general happiness or with the critics of utilitarian theory in general that justice is a good apart from its consequences.¹⁵⁹ Regardless of our judgment, however, we must admit that the consequences of a human action do matter, if not in an absolute sense, then at least on an intuitive level. The physician's decision to choose a course of action concerning a patient in the face of the condition of mutual exclusivity will create consequences for the patient and society in general, regardless of whether the physician followed a utilitarian or non-utilitarian moral calculus. Not all the problems the physician will encounter during the course of an ordinary day will

¹⁵⁹Munro (1973:449).

pose dire ethical dilemmas, but these concrete cases will not necessarily be any less complex than the stylized cases favored by philosophers. Fortunately for all involved parties, the physician, with the help of available or obtainable information, may be able to reconcile his or her intuitions as to what is right and what is wrong with higher-order ethical principles, including the utilitarian principle of consequentialism.¹⁶⁰ This reconciliatory moral calculus would liberate utilitarian theory from its rigid operational context and direct it toward a more general ethical framework, such as that of the principle-based approach discussed next.

The principle-based approach displays three essential characteristics: (1) *application*, that is, the derivation of the right course of action from general principles and rules; (2) *balancing*, that is, weighing conflicting principles to determine which has priority in the situation under consideration; and, (3) *specification*, that is, qualitatively tailoring our norms to cases through specifying such circumstances as who, what, and when.¹⁶¹ This template is somewhat narrower than the framework Childress and Beauchamp suggested a few years previously, which was based on four primary principles (Respect for Autonomy, Beneficence, Non-maleficence, and Justice) supplemented by some secondary

¹⁶⁰R. H. Hare, "A utilitarian approach," in H. Kuhse and P. Singer (eds.), *A Companion to Bioethics*. Oxford: Blackwell Publishers, Ltd. (2001: 84).

¹⁶¹J. F. Childress, "A principle-based approach," in H. Kuhse and P. Singer (eds.), *A Companion to Bioethics*. Oxford: Blackwell Publishers, Ltd. (2001:63), referring to H. Richardson, "Specifying norms as a way to resolve concrete ethical problems," *Philosophy and Public Affairs* 19 (1990:279-320).

guidelines (such as maintaining confidentiality or not violating privacy).¹⁶² Each of these principles and guidelines seems eminently appropriate in the formulation of an equitable policy of access to ARTs. Few people, if any, will assert that *disrespect* would be more appropriate from a moral standpoint than respect, or *injustice* more appropriate than justice. Hence, the burden of proof would fall to the *opponents* of the liberalization of access to assisted reproduction to show that a principle-based research agenda would inherently violate some higher-ranking ethical construct. The usual problem still applies, however, in that while each of these principles may be worthy in and of itself, it may be impractical to combine them together. The most glaring difficulty would be accommodating Respect for Autonomy with each of the remaining three principles, Beneficence, Non-maleficence, and Justice. The “balancing” of the conflicting principles, a necessary condition of this ethical approach, disconcertingly brings to mind the concept of “tradeoff,” the trademark operational tool of the utilitarian perspective.¹⁶³

¹⁶²T. L. Beauchamp and J. F. Childress (1989), *Principles of Biomedical Ethics*, New York: Oxford University Press, *passim*. In a later version of their book, Beauchamp and Childress further expand their ethical outlook by combining the three essential characteristics of the principle-based approach (application, specification, and balancing) with the four primary principles (respect for autonomy, beneficence, non-maleficence, and justice) within the framework of what they term a “coherentist” (as opposed a deductivist or inductivist) theory of biomedical ethics (*Principles of Biomedical Ethics*, New York: Oxford University Press, [1994:11-40]).

¹⁶³Principle-based bioethicists are not impervious to this criticism and believe that the principles of specification and balancing may mitigate it. Beauchamp and Childress provide a telling example to stress this point:

As a simple example of specification, consider again the rule “Doctors should put their patients’ interests first.” A fact of life in modern medicine in the United States is that patients sometimes can afford the best treatment strategy only if their physicians falsify information on insurance forms ... It does not follow

Then we have **the virtue ethics approach**. It has a long history, going back to Zeno of Citium, the Stoic (c. 320 – c. 250 BCE). Zeno observed that human beings are the only creatures endowed with knowledge, reason, or wisdom (*logos*). This distinction bestows upon them not only immense power, but also the duty to circumscribe their conduct by four cardinal principles of morality: justice, courage, pragmatism, and self-control. *Logos* and its four attendant virtues may not be sufficient to eradicate all the evils in the world and establish a state of collective bliss. Yet, there is no better alternative to lead the way. Virtue is not a spontaneous, ephemeral feeling such as a fleeting sentiment of pity or compassion, but a constant force to propel *logos* to generate outcomes that are beneficial to fellow human beings:

The sage acts from principle or “logic;” pity and [other] “irrational feelings” are extirpated from his disposition, though he does experience “rational” emotions such as joy ... An action performed by the sage, such as caring for parents, may look the same as the actions of other men. But the sage’s action will be good and the actions of others bad, since the moral status of any action is determined by the agent’s disposition.¹⁶⁴

from a proper understanding of the rule of patient-priority that a physician should act illegally by ... distorting ... a patient’s problem on an insurance form. Our rules against deception and for patient-priority are not categorical demands, and they stand in need of specification to give fuller, more concrete moral advice to physicians who wonder whether they should deceive payers, and, if so, under which conditions (1994:29).

¹⁶⁴A. Long, “Ethics of stoicism,” in P. P. Wiener (ed.), *Dictionary of the History of Ideas: Studies in Selected Pivotal Ideas*, vol. IV, New York: Charles Scribner’s Sons (1973:321).

By making virtuousness a universal prescription of moral action irrespective of the agent's social status and personal circumstances, the virtue ethic did much to liberalize and humanize social relations.¹⁶⁵ But, it should be recalled that the original model of rational virtue was exceptionless. Indeed, according to Zeno, not for a moment could the sage veer from the Stoic principle, even if he happened to be stretched on the rack. This characteristic differentiated sages from fools, and bestowed only on the former the capability to turn their virtuous qualities into other people's happiness. Hutcheson revised the Stoic principle by distinguishing *logos* from virtue. He contended that because human beings are endowed with such benevolent instincts as conscience, aesthetics, sense of community, morality, honor, and humor, even those who have no knowledge of the physical world (or, for that matter, no faith in God) will still experience these sentiments.¹⁶⁶ As such, Hutcheson's behavioral construct of a benevolent moral agent contrasted not only against the rationally virtuous model of man elaborated by Zeno, but also the base model of human beings expounded by Hobbes.

Hutcheson's argument against rationalist ethics, after undergoing a small change, paved the way for Bentham's utilitarianism. Benevolence, according to Hutcheson, becomes more laudable as it becomes more pervasive so that the best action is the one that "best produces the greatest happiness for the greatest

¹⁶⁵Long (1973:322).

¹⁶⁶*Essay on the Nature and Conduct of the Passions and Affections, with Illustrations upon the Moral Sense* (1728:§1), reprinted by Indianapolis: Liberty Fund (2002).

numbers.”¹⁶⁷ In other words, whether an action should be considered good depends on the consequences of compassion, benevolence, or social-mindedness.¹⁶⁸ We have seen that Adam Smith, the inheritor of the same chair (that of Professor of Moral Philosophy) previously occupied by Hutcheson at Glasgow, refined his predecessor’s construct in *Moral Sentiments* (1759) by rendering it a two-tiered ethical edifice, in which such principles as sympathy, propriety, justice, merit, and duty occupied the first, and such precepts as self-interest (prudence), vigilance, circumspection, temperance, constancy, and firmness took up the second level of morality. Smith’s classification required individuals to sacrifice the second-level precepts if they conflicted with first-level virtues,¹⁶⁹ an argument that routinely emerges in contemporary bioethical discourse.

In the works of Elizabeth Anscombe, Philippa Foot, Bernard Williams, and Alasdair MacIntyre, a virtue-based approach to ethics has been developed to the point where it is widely recognized a coherent and plausible alternative to mainstream consequentialist and Kantian approaches.¹⁷⁰ The essence of this approach as applied to bioethics is that it concentrates on the purposes rather than

¹⁶⁷The expression is from Hutcheson’s *Inquiry Concerning Good and Evil* (1726:§3).

¹⁶⁸Raphael (1973:231).

¹⁶⁹A. Smith, *The Theory of Moral Sentiments*, D. D. Raphael and A. L. Macfie (eds.), Oxford: Oxford University Press ([1759]1976:§ VII.i.3.15).

¹⁷⁰J. Oakley, “A virtue ethics approach,” in H. Kuhse and P. Singer (eds.), *A Companion to Bioethics*, Oxford: Blackwell Publishers, Ltd. (2001:86). See References for the works alluded to by Oakley.

the consequences of human action. What is important in this ethical framework is the objective moral standard, not the subjective moral faculty of the agent. That is, it is not discussed whether the agent is *capable* of moral sense: what remains to be seen is whether the agent *acted* according to an *a priori* moral standard. Specifically, did the agent act courageously, honestly, and justly, or, conversely, callously, cowardly, and egoistically? It is the mixture of these moral standards reflected in the agent's action that culminates in the broader and more familiar concepts of right and wrong.¹⁷¹ The virtue-approach rejects any position in bioethics that is not virtuous, regardless of whether it may lead to efficient solutions, say, increase the aggregate utility. In fact, a pivotal virtue ethics criterion directly opposes utilitarianism: "acting rightly does not require that we maximize the good."¹⁷²

Still, some other criteria of this approach largely coincide with Act Utilitarianism. A key criterion of virtue ethics, "Goodness is prior to rightness," keenly imparts a utilitarian flavor. In fact, the ascendancy of the good over the right is centrally established in any and all consequentialist theories, which this criterion clearly brings forth.¹⁷³ Three other virtue-based criteria, namely "Virtues are irreducibly plural intrinsic goods," "Virtues are objectively good," and "Some intrinsic goods are agent-relative," also have a decidedly utilitarian ring. The first

¹⁷¹Oakley (2001:86).

¹⁷²Oakley (2001:91).

¹⁷³Oakley (2001:90).

criterion, that virtues bestow *plural* consequences rather than a single, cardinal measure of utility, is not substantive enough to distinguish it from standard hedonistic calculation. Eight decades have transpired since John Richard Hicks effectively debunked the classical utilitarian concept of cardinality of utilities demonstrating how a more general, and more telling, price theory could be built on an ordinal conceptualization of utility.¹⁷⁴ As for the next criterion, that virtues are objectively good, it brings to mind the early classical economic discourse in which certain commodities were deemed “goods” and other as “services,” the first constituting physical and the second psychological sources of satisfaction. This axiom has long been discarded in economic theorizing, in which goods and services (as well as needs and wants) are clumped under the same rubric, one party’s subjective valuation constituting objective data to the other. Finally, only an Act Utilitarian would argue that all goods are agent-neutral (meaning that my good counts the same way in utility calculation as your good) while Rule Utilitarians would not see any problem in according intrinsic value to a particular social good (say, public health or fire protection), being aware that a public good—say, public health—might count more for you if you have a sick child while fire protection might count more for me if I have a house near a gasoline station. Accordingly, you and I will contribute to the cost of receiving these

¹⁷⁴The ordinal approach requires the consumer to simply indicate whether she perceives more utility or less utility for a commodity, rather than specifying a numerical value for it. The resulting economic analysis, done by means of the so-called “indifference curves,” offers even a keener analysis of the choice process of the utility-maximizing consumer. See Hick’s 1934 work, with R. G. D. Allen, “A reconsideration of the theory of value,” *Economica*, vol. I, February and May:52-76 and 196-219, respectively.

public services (that is, we will pay the commensurate taxes) under the provisions of different valuations.

In the end, there is only one virtue-based criterion that does not coincide with any form of utilitarianism: “An action is right only if it is what an agent with a virtuous character would do in the circumstances.”¹⁷⁵ In other words, the virtue approach requires that the agent have the “right” character, and act in full compliance with that moral conduct, even if the consequences of the agent’s action were to result in a net disutility. To illustrate this point, assume that a student has received a passing grade on a particular exam without resorting to cheating, although it was observed by his classmates that he had passed all his other classes by cheating. Should the professor flunk the student? Virtue dictates that the professor grade all exams fairly and promote any student who has attained a passing grade on an exam without cheating, such as this student. Utilitarian theory, conversely, would dictate that the professor flunk the student, since doing so would yield the maximum net contribution to total utility.

That an ethical approach is demonstrated to be against utilitarianism is not sufficient to render it intrinsically valid. In fact, the virtue-based ethic is beset by a serious problem, and that is the disconcerting observation that it does not provide clear-cut prescriptions as to what kind of virtue would be called for under

¹⁷⁵Oakley (2001:88), referring to R. Hursthouse’s “Virtue theory and abortion” *Philosophy and Public Affairs* 20 (1991:225) and “Normative virtue ethics,” in R. Crisp (ed.), *How Should One Live? Essays on the Virtues*. Oxford: Clarendon Press (1996:22).

what circumstances. It is easy to see how the virtue of justice would require the keeping of a deathbed promise, even though living people would benefit from its being broken, or how the virtue of benevolence would entail saving another's life where continued life would be good for that person.¹⁷⁶ But the virtue approach breaks down when one imagines circumstances in which the discernment of the right virtue becomes contradictory. To illustrate, a proponent of the virtue-based approach may deem a nonbirthing lesbian partner's demand to be granted paternal rights dishonest, insensitive, or foolhardy while another proponent may find the same behavior compassionate, loyal, or even enterprising. In fact, the latter adopter of the virtue approach may find in the nonbirthing lesbian partner's demand of paternal rights an even a *broader* conception of virtue, one that demonstrates an appreciation of the value of parenthood and willingness to commit the resources of a conjugal unit to an important undertaking with due seriousness and circumspection. The former proponent of virtue-ethics, conversely, may detect in the same behavior a *failure* to appreciate the intrinsic value of parenthood and *irresponsibility* in committing the family's resources to materialize an essentially frivolous demand. As such, it is conceptually difficult to afford to the virtue approach the characteristic of a general ethical perspective in the treatment of problems associated with ARTs, as this approach, while exhorting individuals to aspire to be virtuous, does not provide guidelines as to what virtue should be called for under what conditions.

¹⁷⁶Oakley (2001:86), referring to Hursthouse (1996:25) and P. Foot, "Euthanasia," *Philosophy and Social Affairs* 6 (1977:107), respectively.

Finally we come to **the care approach** to ethics. This approach refers to a moral theory that focuses on caring as the basis of moral action. It elucidates the idea of relationship analogously to the way in which ethics of justice informs the concept of autonomy.¹⁷⁷ Care ethics is a relatively recent phenomenon, traceable especially to the works of Carol Gilligan and Nel Noddings published in the early 1980's.¹⁷⁸ Much of the early ethic of care discourse focused on the contributions, responsibilities, and rewards of caregivers in a private setting, such as a mother nurturing her child, a child taking care of an infirm or elderly parent, or a wife attending to the needs of her husband. The caregiver was uniformly portrayed as the exploited, underserved counterpart in this private exchange process, and as the disenfranchised, disempowered party in the larger social context. It would be unrealistic to project the contemporary medical caregiver in quite the same light, considering the economic and social benefits accrued to today's healthcare professional serving his or her patients. Accordingly, much of the early ethic of care discourse is not directly referred to in the present work.

In the following decade, Joan Tronto and Eva Feder Kittay substantively added to Gilligan's and Noddings's view of an ethic of care as a virtuous moral

¹⁷⁷B. S. Andrew, "Angels, rubbish collectors, and pursuers of erotic joy: The image of the ethical women," *Feminists Doing Ethics*, P. DesAutels and J. Waugh (eds.), New York: Roman and Middlefield (2001:119).

¹⁷⁸M. A. McLaren, "Feminist ethics: Care as a virtue," *Feminists Doing Ethics*, P. DesAutels and J. Waugh (eds.), New York: Roman and Middlefield (2001:101).

sense. Tronto contextualized ethic of care within a political framework,¹⁷⁹ whereas Kittay fit it within a Rawlsian analytical one.¹⁸⁰ In doing so, they demonstrated that the essential characteristics of an ethic of care based on cooperation and interdependence provides general applications. In the next decade, Rita Manning recast care ethics as a set of general bioethical guidelines in the analysis, discussion, and practice of medical care specifically.¹⁸¹ This ethics of care approach affords important insights for the purposes of the present work, hence requiring a fuller exposition, which will be attempted in the subsequent chapter.

What I have discussed in this chapter has been a general review of economic, legal, and ethical perspectives applicable to healthcare and ARTs. I have stressed that the monolithic methodology of conventional economics fails to provide a descriptive generalization of what takes place in the “market” for ARTs. Newly developed economic subspecialties, such as behavioral and political economics, offer keener insights in this regard. Similarly the ethical perspective applicable to healthcare comes in a variety of models, some offering partial and contextual moral equilibriums others exuding universal overtones.

¹⁷⁹J. C. Tronto, *Moral Boundaries: A Political Argument for an Ethic of Care*, New York: Routledge (1999).

¹⁸⁰E. F. Kittay, *Love's Labor*, New York, Routledge (1999).

¹⁸¹Manning (2002).

I discussed that legal concerns pertaining to ARTs fall somewhere in between conventional economics and ethics, as represented by the contributions of Dorothy Roberts and John Robertson regarding procreative liberty. Their construct reflects the inevitability of involving the legal institutions to figure in any general theory applicable to the utilization of ARTs. A series of epistemological concerns were also examined in this chapter, culminating in the view that inductive models of choice would prove more appropriate in this contextualized decisional environment than empirico-deductive ones, which are by definition exceptionless. I will deal with these issues in more detail in Chapter 4, ultimately proposing a general theory of utilization of ARTs, a special class of products that involves both private and public choice. But first, I will devote Chapter 3 to a fuller investigation of ethic of care, which seems especially well-suited to the purposes of this work.

CHAPTER 3

AN ETHIC OF CARE APPROACH TO ASSISTED REPRODUCTION

Rita Manning envisions an ethic of care as a way of informing the individual of his or her own moral role and enunciating the ways in which the individual ought to act with respect to the attendant moral situation revolving around medical care.¹⁸² She subsequently enumerates five moral principles to guide the individual in forming the requisite self-understanding to apply one's self to such ethically laden issues as access to care, patients' rights, and the management of patients with special needs.

The five guidelines put forth by Manning are: Moral Attention, Sympathetic Understanding, Relationship Awareness, Accommodation, and Response. Each of these moral parameters squarely bears upon liberalized access to assisted reproduction. In variance with the universally-oriented ethical approaches examined in Chapter 1, especially the principle- and virtue-based approaches, the five moral dimensions of an ethic of care do not have to be cherished by every member of society, nor do they have to be applied uniformly to everybody. This ethical framework allows the possibility of its being employed even when the moral deliberation is directed to make a minority of the population better off. This particularist stand is based on the foundation that: (1) all persons, even when they constitute a minority, are inherently valuable; (2) any particular

¹⁸²Manning (2001:98).

social contexts, relationships, and personal experiences are important in and of themselves; (3) special obligations need to be given priority; and, (4) any member of the community should direct moral attention to the plight of others.¹⁸³ To reiterate, this ethical perspective emphasizes the importance of being sensitive to the needs of unique individuals facing unique dilemmas, rather than seeking universal principles of right conduct that would apply to all cases all the time, and underscores the importance of attending to responsibilities and to the preservation of social relationships, rather than focusing on competing rights.¹⁸⁴

Evidently because ethic of care has a strictly contextualized approach to giving and receiving care and has been expounded exclusively by writers exhibiting a feminist perspective, critics immediately dubbed it a theory of “women’s morality.” Some authors openly continue to espouse this paradigm. Other feminist authors, notably Tronto and Kittay, have expanded the paradigm by resting it upon a political or a distributive platform, respectively. In doing so, they have demonstrated that the moral voice emanating from an ethic of care, even though may have originated from values traditionally associated with women, is by no means unique to women. Rather, it is applicable to a host of problems revolving around the general concept of care. Reminding that no individual member of the community is entirely self-made, these authors urged fellow ethicists to take a closer look at the process through which individuals

¹⁸³Manning (2001:101).

¹⁸⁴Kymlica (1993:10).

enrich themselves through the care they receive from their cohorts without compensating these cohorts with commensurate valence. These authors indicate the substantive differences between an ethic of care and an ethic of justice, concluding that the former perspective is as valid as the latter. They remind us that the “conception of morality as concerned with the activity of care centers moral development around the understanding of responsibility and relationships just as the conception of morality as fairness ties moral development to the understanding of rights and rules.”¹⁸⁵

This is not to say that ethicists must choose either an ethic of justice or an ethic of care. Tronto makes the point that an ethic of care is complementary to an ethic of justice. But, care ethics consciously delves into concrete, everyday problems that beset modern society as the result of a dismal historical progression whereby the members of that society have become more and more distanced from one another. As such, an ethic of care stands a better chance to generate effective solutions in such a society by concentrating on actual, contextual problems, leaving the solution of abstract, hypothetical problems to an ethic of justice. Carol Gilligan, a seminal contributor to an ethic of care, stresses the importance of the reconciliation of the two views to morality in the following terms:

Since all relationships can be characterized both in terms of equality and in terms of attachment or connection, all relationships—public and private—can be seen in two ways and

¹⁸⁵C. Gilligan, *In a Different Voice: Psychological Theory and Women's Development*, Cambridge, Massachusetts: Harvard University Press (1982:18).

spoken of in two sets of terms. By adopting one or another moral voice or standpoint, people can highlight problems that are associated with different kinds of vulnerability—to oppression or to abandonment—and focus attention on different types of concern.¹⁸⁶

The question of whether the voice of an ethic of care is a gendered one, though constituting a thorny point in the discussion of the applicability of this theory to problems in certain contexts, is hardly problematic in the development of an exchange milieu made up of seekers and providers of ARTs. In fact, a gendered voice is likely to inform the political economic method in the analysis of such a highly contextualized exchange process as that involving ARTs. One side of this exchange relationship is inevitably represented by a seeker of the female gender, who would be better off if she goes through the exchange relationship with a care provider who acts attentively, sympathetically, responsibly, competently, and responsively. Thus, an ethic of care seems apt to serve as a facilitator rather than a deterrent to the materialization of an efficient yet fair exchange process entailing ARTs.¹⁸⁷

Some proponents of the ethic of care approach stress that in order for this perspective to attain the status of a fleshed out ethical theory it must be

¹⁸⁶Tronto (1993:80), referring to C. Gilligan *et al.*, *Mapping the Moral Domain: A Contribution of Women's Thinking to Psychology and Education*, Cambridge, Massachusetts: Harvard University Graduate School of Education (1988:xviii).

¹⁸⁷A rift between an ethic of care and conventional economic theory, meanwhile, will persist due to the latter discipline's universal approach of problem solving on the basis of unadulterated independence and autonomy.

formulated within a full moral context supplemented by a political substance. Otherwise, in the opinion of these authors, an ethic of care will be discounted as “women’s morality,” never entering the realm of moral choice.¹⁸⁸ Political economy auspiciously emerges in this connection, as the operational framework provided by this theory will help ethic of care gain not only scientific legitimacy, but also the liberating notion that individuals’ choices—public or private, moderate or extravagant—are conducive to a dynamic equilibrium, which will continually adjust itself under emerging conjunctions.

Indeed, the political economic operational framework propitiously overlaps with the five essential sentiments of the care approach. Take the care approach’s moral sentiment of Sympathetic Understanding, for example. According to this principle, one should sympathetically understand the situation in which other people find themselves and try to generate a solution that is in these people’s best interests. To quote one of the best known proponents of this approach:

I try to see [my patient] sympathetically. If I feel it hard to be sympathetic, I may try several strategies—perhaps imagining her as myself in an earlier medical crisis. As I adopt this sympathetic attitude I become aware what she wants and needs from me. Finally, I look to satisfy her need in a way that will preserve her sense of competence (when the patient is relevantly competent) and increase the comfort.¹⁸⁹

¹⁸⁸Tronto (1993:125).

¹⁸⁹Manning (2001:98).

Now consider the below passage excerpted by Emil Sax, one of the fathers of the political economic concept of subjective valuation, who wrote eighty years earlier:

The amount of goods to be transferred [*i.e.*, sympathy] is ... conditioned by the social relations between the members of the community, as the subjects of the action [*i.e.*, the sympathetic physician], and those individuals who benefit by it [*i.e.*, the patient]. These social relations derive from the degree of selfishness or altruism which individuals within the community display toward each other, or from the peculiar mixture of “mutuality.” ... The social relations ... are fashioned differently according to the group of persons who become objects of collective activities with varying reasons and purposes, and according to the kind of welfare promoted by these activities.¹⁹⁰

It seems that sympathetic understanding, within the larger contexts of subjective valuation and mutuality, takes a central place in political economy, which, though adopting the price-theoretic calculus as an effective tool of measurement, simultaneously follows the inductive path the decision-maker treads toward the attainment of his or her predetermined goals within the larger decision context circumscribed by political, social, historical, and ethical causes and consequences.

¹⁹⁰E. Sax, “Die Wertungstheorie der Steuer,” *Zeitschrift für Volkswirtschaft und Sozialpolitik*, vol. IV (1924), reprinted in R. A. Musgrave and A. T. Peacock (eds.) as “The valuation theory in taxation,” *Classics in the Theory of Public Finance*, London and New York: Macmillan (1958:179).

As for the other remaining principles elaborated under an ethic of care, namely, Moral Attention, Relationship Awareness, Accommodation, and Response, they also find a resounding reflection in this branch of economic scholarship. Manning writes:

Moral attention is the attention to the situation in all its complexity. When I am morally attentive, I wish to become aware of all the details that will allow me to respond to the situation with sympathetic understanding. In this case, I attend carefully to my patient in order to ascertain how she is feeling ... There is a special kind of relationship awareness that characterizes an ethic of care. I recognize that the other is in relationship with me. First, there is the most basic relationship, that of fellow creatures. Second, there is the immediate relationship of need and ability to fill the need. Finally, I may be in some role relationship with the other that calls for a special response, such as health care worker-patient ... So, I see my patient as a fellow fragile human. I recognize that she is in need of my help and that I am able to give it ... Related to the notion of relationship awareness is accommodation. Many times there are many persons involved and how best to help them is not obvious, In this case, my desire to nurture networks of care requires that I try to accommodate the needs of all, including myself ... Finally, an ethic of care requires a response on my part. It is not enough to stare at my patient and imagine her in a sympathetic way ... I must make my caring concrete in the actions that I take to respond to her need.¹⁹¹

A parallel argument was also made by some Austrian, Scandinavian, and Italian political economists at the turn of the twentieth century. Returning to Emil Sax again, he answered in the above mentioned work the criticism invoked by the detractors of subjective valuation as to how an individual could actually discern

¹⁹¹Manning (2001:99).

the impact and measure the magnitude of his or subjective valuation on his or her cohorts. Sax explicates:

[The individual] undergoes the influence of the spiritual bond of community and this enables him to judge: it has the effect that individuals become part of the common feeling and volition with respect to the common welfare. By virtue of this motive, individuals as members of the community understand the relative importance of concrete purposes for the community; they are clearly conscious or obscurely feel that they all share equally in the purposes and bow to the necessity of withdrawing the required goods from [his own] individual purposes to the extent that the collective purposes have greater importance for all together and hence for each separate person.¹⁹²

The notion of moral attention, sympathy, awareness, accommodation, and response are all manifest in Sax's conception of the exchange relationships among the members of a community in the above two brief excerpts. These notions were further elaborated by other subjective value theorists, especially Erik Lindahl, Knut Wicksell, and Gunnar Myrdal, whose contributions culminated in a political economic equilibrium that is not only efficient, but also equitable. A more detailed discussion of this development will be made later on. It should suffice at this point to stress that, despite the obvious variances in the two paradigmatic jargons, one ethical and the other political economic, there is a fertile interface between the two discourses offered by the care-oriented ethical approach that allows a more general examination of the exchange relationship that takes place between the seekers and the providers of ARTs.

¹⁹²Sax ([1924]1958: 184).

The axiomatic constructs of consequentialist, absolute rule-oriented, principle-based, and virtue ethic frameworks seem irreconcilable with the adaptive methodological outlook of political economy, since each of these ethical perspectives places too much emphasis on what sort of person we ought to be and what sort of life we ought to lead rather than what sort of a person we actually are. The principles brought to fore from the perspectives of an ethic of care and political economy meanwhile are more in line with the observation that human beings are capable of acting in a socially-minded way, no matter whether we call it sympathy, mutuality, solidarity, moral attention, relationship awareness, accommodation, response, or what have you. We glean from the ethic of care approach the notion that before we insist on one standard of moral behavior for all medical practitioners and patients, we should be sensitive to the diverse self-understandings that we are bound to encounter in this decisional environment.¹⁹³ This approach, while acknowledging that all persons are valuable, also recognizes the likelihood that there may exist some obligations that call for special attention. For, it envisions society as more than a mere aggregate of individuals, and relationships as more than just personal property; in fact, it attributes to each community and each relationship a moral standing of its own.¹⁹⁴

Ethic of care eschews algorithmic, vicarious valuations. When applied to medical practice, it extends itself over the entire breadth of issues specific to the

¹⁹³Manning (2001:101).

¹⁹⁴Manning (2001:101).

doctor-patient relationship. More specifically, it emphasizes not only the ethical issues considered by the patient, but also the special obligations ascribable to the physician. This characterization is essential for the purposes of this work, which casts the relationship between the seekers and providers of ARTs against the backdrop of a voluntary exchange milieu. The subjective valuation approach bolstered with the moral sentiments explicated by an ethic of care would be a welcome companion in this analysis. For, the voluntary exchange mechanism will lend a solid methodological framework within which can be accomplished an effective analysis of the obviously ethically relevant relationship taking place between the seekers and providers of ARTs. Put differently, the integration of these two approaches will provide an investigative agenda in which both positive and normative issues can be encompassed, the first attempting to measure and compare the quantifiable outcomes of the seeking (demand) and provision (supply) of ARTs, and the second judging the degree of goodness of this exchange relationship from the moral standpoint of an ethic of care. As such, ethical analysis will assume a central role in political economic analysis by affording its normative foundation. Thus, the resulting political economic analytical framework, enriched with the pivotal criteria for evaluation supplied by an ethic of care, will stand a better chance of elucidating the means-ends relationships that evidently occur in the autonomous decisions of the seekers and providers of ARTs than any other economic construct deprived of a moral standing.

It appears from the foregoing discussion that an ethic of care squarely relates to the supply side of care. In fact, when Joan Tronto writes that the proclivity of meeting the demands of caring is “a quality of a morally good individual or society,”¹⁹⁵ she evidently refers not to the demand for, but to the provision of some need-satisfying action. Mere declaration of a person’s or society’s willingness to satisfy the needs of fellow members of society would not render that person or society morally good. An ethic of care requires the actual *delivery* of care in an attentive, responsible, competent, and responsive manner. Further, care must take place within the context of a coherent, appropriate delivery program. Tronto does not specifically address healthcare or providers of healthcare. But the extrapolation of the paradigm of care expounded by Tronto to healthcare in general and ARTs in particular seems clearly indicated. For one thing, healthcare professionals are uniformly schooled in the principles expounded by Tronto. The Hippocratic oath these professionals take before beginning medical practice¹⁹⁶ largely complies with the ethical guidelines explicated in Tronto’s work. In addition, physicians are constantly and specifically warned during their professional training not to shut out any seeker of medical care, to recognize the needs of those who fall under their care, and to attend to these needs to the best of their abilities. By and large, this learning process seems to culminate in appropriate outcomes, considering that most care

¹⁹⁵Tronto (1993:126).

¹⁹⁶In fact, nowadays the recitation of the Hippocratic Oath generally takes place at the very beginning of medical training.

providers routinely suspend their own concerns in order to attend to as many patients as they can and to give each patient as much care as they need.

As for the second dimension of an ethic of care, responsibility, this concept, which is derived from historical, cultural, and ideological imperatives, informs physicians of their obligations toward their patients that extend far beyond the explicit set of rules contained in professional manuals. The third component of the moral quality of healthcare, competence, requires healthcare providers to benefit their patients with effective treatment, and, should they lack in the required level of competence, to entrust their clients to the care of more competent providers. Alternatively, an ethic of care exhorts healthcare providers to refrain from attending to the needs of their patients when they do not have the necessary content knowledge or from escaping their due responsibility by claiming false incompetence.

Responsiveness constitutes the fourth moral pillar of an ethic of care, one that requires healthcare practitioners to be attuned to problems of vulnerability and inequality on the part of their patients. To assume away these realities, say, by hiding behind the shield of a patient's individual independence and autonomy, reflects the unwarranted conviction that all patients who fall into a given category (*e.g.*, those suffering from AIDS) are uniform in their needs. Responsiveness, as elaborated by Tronto, warns care providers not to put themselves into the position of others, which would presuppose that that the other is exactly like the self, but

to consider the other's position as that other expresses it, entirely from the point of view of the other.¹⁹⁷ A healthcare provider who fails to make this distinction runs the risk of being relegated to the role of a mere technician (albeit a highly qualified one) rather than a healer.

Consequently, much remains to be achieved in the academic and practical training of healthcare providers to bolster this dimension of healthcare delivery. Specifically, they should be informed not only of such broad ethical proscriptions as to avoid cheating and misdirecting their patients, but also of ethical problems that arise in everyday contexts. Any action, statement, suggestion, or implication on the part of the physician, or the lack thereof when expected by care-receivers, would directly invite ethical scrutiny. We finally come to the catchall principle of integrity of care, according to which the healthcare provider is required to deliver the four dimensions of care within the framework of an integrated whole, for otherwise it would be impossible to resolve the myriad daily conflicts that always emerge in the delivery of healthcare.

A question that naturally emerges in this context is whether a physician's receiving financial compensation from his or her patient (or from a third party) constitutes a violation of the paradigm of an ethic of care. The ethic of care literature does not address this concern. A pertinent concept, "interest" or "interestedness," is elaborated in ethic of care arguments, but it implies not the

¹⁹⁷Tronto (1993:136).

compensation due to the provider of care, but a contingency that engages the care-giver's attention.¹⁹⁸ As such, "interest" is rendered subservient to "care" because care implies two additional aspects. First, care, as opposed to interest, implies a reaching out to something other than the self in such a manner that is not self-referring or self-absorbing, and, second, care is necessarily conducive to some sort of action while interest may not be.¹⁹⁹ Once care is defined in these terms, the pertinent question that then arises is not whether compensation should have a place in the delivery of attentive, responsible, competent, and responsive care, but which party receives the net benefit. In the case of the net benefit being imputed to the care-receiver, the fact that a payment has taken place is of little consequence. In addition, by allowing compensation in care-giving and receiving we expand the act of competent and responsible caring to the private domain. Thus, care-receivers become situated to demand satisfactory care in each realm, private or public, after frankly assessing the expected benefit from care against the due cost.

In an integrated model of political economy and an ethic of care, the latter perspective based on the key notion of subjective valuation and ranking of preferences, will provide a realistic model of the demand of ARTs while the

¹⁹⁸Tronto (1993:102).

¹⁹⁹Tronto (1993:102), referring to the works of N. Noddings, *Caring: A Feminine Approach to Ethics and Moral Education*, Berkeley, California: University of California Press (1984:5) ; S. Ruddick, "The Rationality of Care," in J. B. Elshtain and S. Tobias (eds.), *Women, Militarism and War: Essays in History, Politics and Social Theory*, Savage, Maryland: Rowman and Littlefield (1990:237); and M. Foucault, *The Care of the Self*, New York: Pantheon (1983:passim, vol. 3).

perspective of an ethic of care will offer a sufficiently descriptive representation of the supply side of this exchange equation. The resulting decisional environment will be operative only in the micro sense, that is, will only concern the relationship between individual seekers and providers of ARTs. The problem of the macroallocation of social resources into healthcare in general and ARTs in particular will not constitute a part of this discussion. The reason for this omission is purely methodological, for when a problem of choice is transferred from the private to the public domain, different classes of variables come into play, requiring the application of entirely different investigative strategies.

In this chapter I outlined the essentials of an ethic of care, which seems most appropriate in the analysis of healthcare delivery. The appropriateness lies in its recognizing care as a central concern of human existence, which begs the transformation of our fractured society to reflect this truth.²⁰⁰ The integration of this ethical perspective with that of political economy bolsters the effectiveness of both components in eliciting an fair and efficient equilibrium in both the public- and the private-economic realm.

²⁰⁰Tronto (1993:180).

CHAPTER 4

TOWARD A MORE GENERAL APPROACH TO ASSISTED REPRODUCTION

One conclusion from the examination of various ethical approaches to ARTs has been that even when researchers subscribe to the same ethical approach they may reach divergent judgments about the appropriateness of these interventions depending on how they have interpreted and implemented the relevant laws, rules, precepts, or principles. Suppose for a moment that a group of authors agreed on the appropriateness of, say, a utilitarian theory in the handling of the problems stemming from procreative technologies. How then are these authors to define the pivotal concept, utility, in this context: from the point of view of the demander of an ART, the donor, the incipient child, or society? Is this utility to be measured in cardinal terms or ordinal? How will the proponents judge this utility against another option of having a baby, say, adoption, or, even more difficult, the preferences of another person? Moreover, even if all these authors agreed on a given definition, measurement, and basis for interpersonal comparability of utility, how will they reconcile it with the social values that naturally emerge in this context? Considering that society is not a monolithic entity, as has become evident in the RCNRT Report, with each social and professional community fostering different notions of utility, how will these researchers apply the standard utilitarian calculus to generate results that are optimal from the point of view of the individual as well as all segments of society?

One practical way to overcome this impasse has been to reconcile some lower-level principles of otherwise opposing philosophical theories within a workable operational framework rather than striving to accommodate their first principles under the rubric of one. This is exactly what the contributors to the RCNRT Report have tried to do. This orientation consists of transposing pure-ethical research to the field of applied ethics, which permits investigators to develop and implement some empirically valid rules without having to indicate their provenance or *modi operandi*.

This platform is not too far from the pragmatic ground offered by price theory. Recall Milton Friedman's analogy involving an expert billiard player and assume that this player has just made a difficult shot. To Friedman, the legitimacy of the source and the appropriateness of process leading to that feat are of no consequence. That is, it does not matter whether this pool player was proficient in laws of physics and geometry, or, for that matter, whether he or she has referred to these laws at all. The important conclusion is that this individual has acted *as if* he or she "knew" the complicated mathematical formulas yielding the optimum directions of travel and accurate estimations of the angles involved.²⁰¹ All the

²⁰¹Friedman ([1953]1979:31). There is nevertheless a crucial difference between an expert and a novice billiard player, and it does not consist of the fact that the expert knows more: the expert knows *differently*. The novice may be equally knowledgeable vis-à-vis the expert about the elementary principles concerning angles, velocity, and momentum. The knowledge base of the expert, however, encompasses three additional kinds of prior knowledge—topical, operational, and conceptual. Prior knowledge of topic entails proficiency in content, relationships, and form, which may be effective in solving problems in familiar contexts. However, the expert would operate effectively in

while, the mind of the player remains a black box, imparting no clue as to the actual procedural path the player has followed. But this does not matter: what matters is that the player's move has generated the optimal outcome.

The counterargument offered by Herbert Simon, this time involving an expert chess player, is more apt for the purposes of this study. Simon maintains that a move made by a chess player is important not solely from the point of view of whether or not it leads to an optimal result.²⁰² What is of consequence is the observation that expert chess players routinely compensate for their limited analytical capacities by referring to some significant patterns located in their long-term memories to generate a move they consider "good enough" under the given circumstances. Simon expands on this point in his 1976 work:

Chess is not an isolated example. There is now a large body of data describing human behaviour in other problem situations of comparable complexity. All of the data point in the same direction, and provide essentially the same descriptions of the procedures [people] use to deal with situations where they are not able to compute an optimum. In all these situations, they use selective heuristics and means-and-end analysis to explore a small number of promising alternatives. They draw heavily upon past experience

unfamiliar situations as well, as she retrieves from her long-term memory those operational means and conceptual reference point, and apply them to the problem at hand. For a detailed discussion of this subject, refer to R. C. Anderson and P. D. Pearson," A Schema Theoretic View of Basic Processes in Reading Comprehension," in P. D. Pearson (ed.), *Handbook of Reading Research*, New York: Longman (1984:255-291). The idea that an equilibrium between new and old information is obtained to the extent that new features of the environment are continually and effectively assimilated into mental structures belongs to Piaget, as remarked by J. Flavell, *The Developmental Psychology of Jean Piaget*, Princeton: New Jersey: Van Nostrand (1963).

²⁰²See "Skill in Chess," *American Scientist*, 61 (1973:394-403); and "Perception in chess," *Cognitive Psychology*, 4 (1973:55-81), both by W. G. Chase and H. A. Simon.

to detect the important features of the situation before them, features which are associated in memory with possibly relevant actions.²⁰³

This argument finds a striking reflection in the passage below written by one of the contributors to the RCNRT report, Will Kymlicka:

There is a substantial body of literature ... in the field of applied ethics on the role of mid-level principles. Precisely because concepts such as *nature*, *agreement*, or *care* are so hard to interpret and apply, theorists ... often need to derive a set of more concrete, mid-level rules or principles from their preferred ethical theory. For example, many utilitarians ... seek to identify mid-level principles that focus on more specific and tangible human interests, such as people's desire for autonomy and the need to prevent harm. ... Similar moves ... are made by proponents of other ethical theories. Indeed, it turns out that proponents of different theories often generate similar principles. One reason ... theories that disagree at the theoretical level converge on the same mid-level principles ... is that they all share a commitment to what we can call the "moral point of view. That is, they all believe there is such a thing as a moral perspective on issues, which is distinct from a prudential (self-interest), scientific, or aesthetic perspective, and which is defined by some notion of respect for persons."²⁰⁴

From both Simon, a cognitive scientist, and Kymlicka, a moral and political philosopher, we glean not only the notion that there is a meaningful difference between the substantive/axiomatic mode of reasoning and the procedural/heuristic one—the first directed to elicit optimal/categorical outcomes and the second satisfactory/partial results—but also the hope that it may be possible to integrate the two modes of decisional behavior. The prospect may be

²⁰³Simon ([1976]1979:73).

²⁰⁴Kymlicka (1993:15-16).

attained only to the extent that axiomatically inclined researchers relax their paradigmatic stances and show a willingness to accept suboptimal outcomes while, at the same time, heuristically oriented investigators bolster the empirical tenor of inductive arguments with more structural rigor. Some economists already have taken the first approach and developed decision rules that are in accordance not with the principle of optimizing behavior, but that of “satisficing.”²⁰⁵ The appropriateness of the latter principle, especially for the purposes of this work, is that it implies the motivation on the part of the choice-maker is not only to do “well,” but also to do “good.” This consciousness was unmistakably reflected in the discussions of both Emil Sax and Justin Oakley presented in Chapter 2, the first proceeding from a political economic premise, the second from the principles of an ethic of care. It was mentioned at the end of the chapter that the connection between the two theories would be explained in more detail, to which point I now turn.

A) POLITICAL ECONOMIC ANALYSIS OF ARTs. The consequentialist drift of conventional economic discourse has come under serious criticism, even from fellow scientists.²⁰⁶ These critics widely observe that individuals routinely measure the appropriateness of an economic decision by its purpose as well as by its outcome. Kenneth Boulding lamented the unfortunate divorce of economics

²⁰⁵Herbert Simon coined this term by combining two adjectives, satisfactory and sufficing, in his *Administrative Behavior: A Study of Decision Making Process in Administrative Organization*, New York: Macmillan (1947).

²⁰⁶See D. Bell and I. Kristol (eds.), *The Crisis in Economic Theory*, New York: Basic Books (1981).

from ethics, admonishing price-theorists for missing the point that “as [any] science moves from pure knowledge toward control, that is, toward creating what it knows, what it creates becomes a problem of ethical choice, and will depend upon the common values of the societies in which the scientific subculture is embedded.”²⁰⁷ The standard counterargument that economic choice is based on value-free individual preferences seems deficient in that it misses the fact that no preference is unique to one individual. Preferences are learned, hence inherently laden with social value. Boulding goes on:

If [someone] says, “I prefer A to B,” there is an implication that he expects other people to prefer A to B also, as well as himself. A moral proposition then is a “common value.” Every culture, or subculture, is defined by a set of common values, that is, generally agreed upon preferences. Without a core of common values a culture cannot exist, and we classify society into cultures and subcultures precisely because it is possible to identify groups who have common values ... Under these circumstances, [economics] cannot proceed at all without at least an implicit ethic, that is, a subculture with appropriate common values.²⁰⁸

Nobel laureate Amartya Sen also pointed to the social and interactive nature of individual preferences. He observed that individuals formed their preferences by liberally imputing in them the concepts of right and wrong, therefore affecting the moral consequences of market exchange processes.²⁰⁹ Sen thus ingeniously juxtaposes deontological considerations in the formulations of

²⁰⁷Kenneth E. Boulding, “Economics as a moral science,” *American Economic Review*, 59 (1969:4).

²⁰⁸Boulding (1969:1 and 4).

²⁰⁹A. Sen, *On Ethics and Economics*, Oxford: Blackwell ([1987]1990: *passim*).

individual preferences with consequentialist considerations relating to the outcomes of the market forces. As a result, the assessment of the ethical provenance of preferences emerges as a necessary condition, which in turn necessitates the scrutiny not only of the consequences of preferences on other things, but also the very operational framework of economic science as to whether it serves to expand the ethical dimension of choice-making process.

As we have seen earlier, the question of whether and how individual preferences simultaneously serve selfish and moral purposes goes back to the birth of economic science. The standard answer provided by nineteenth-century political economists was that *homo oeconomicus* was a social egoist viewing his private and social wants as complementary to each other, as stated in 1850:

[T]o compass greatest happiness, the human constitution must be such that each man may perfectly fulfill his own nature, not only without diminishing other men's spheres of activity, but without giving unhappiness to other men in any direct or indirect way... [T]he secondary ... requisite [is] that each shall be capable of receiving happiness from the happiness of the rest ... Lastly, ... while duly regardful of the preceding limitations, each individual shall perform all those acts required to fill up the measure of his own private happiness (Ch.3, §2) ... The ultimate man will be one whose private requirements coincide with public ones. He will be that manner of man who, in spontaneously fulfilling his own nature, incidentally performs the functions of a social unit, and yet is only enabled so to fulfill his own nature by all others doing the like (Ch 30, §13).²¹⁰

²¹⁰Spencer (1850).

If this view has merit then individual happiness is the outcome of an activity that has a value for both the individual and the community, one that presupposes the existence of a relevant moral rule, say, justice or demand of sacrifice. What follows from this premise is the corollary that individuals are inherently motivated to attain equilibrium in both spheres of human activity, private and communal, or, alternatively, to comply with the first principles of both political economy and ethics. This joint result occurs because:

the injunctions of the moral law ... coincide with and anticipate those of political economy. Political economy teaches that restrictions upon commerce are detrimental; the moral law denounces them as wrong. Political economy tells us that loss is entailed by a forced trade ...; the moral law will not permit such a trade to be established ... Penalties upon usury are proved by political economy to be injurious; by the ... moral law they are prohibited as involving an infringement of rights ... On sundry other questions, such as the hurtfulness of tamperings with currency, the futility of endeavors permanently to benefit one occupation at the expense of others, the impropriety of legislative interference with manufacturing processes, etc., the conclusions of political economy are similarly at one with the dictates of [moral] law (Ch. 31, §4).²¹¹

A recurrent call in political economic literature through the second half of the 19th century is for a more humanistic approach in the handling of economic and social problems, one that takes full account of the necessary ethical considerations.²¹² We have seen that *homo oeconomicus* became abstracted from a social and ethical setting at the turn of 20th century in the aftermath of the

²¹¹Spencer (1850).

²¹²A. W. Coats, "Utilitarianism, Oxford idealism and Cambridge economics," in P. Groenewegen (ed.), *Economics and Ethics?* London: Routledge (1996:80).

mathematization of human choice, when individual preferences came to be treated as exogenous (*i.e.*, unexplained) variables. Recall from the contributions of Tullock and McKenzie how standard economic logic was squarely imposed on such ethically-laden problems as forming a family and having children, and, elsewhere in their 1985 work, on drinking, committing crimes, lying, and cheating.²¹³

The current state of affairs in economic theorizing with respect to the moral value of individual choice is that the two parties making a choice have factored in their respective social valuations in their individual preferences. Put differently, the collective interest registered in political, legal, and ethical institutions is *indirectly* reflected in this exchange relationship, though the two participants outwardly act in conformity with their individual valuations. Therefore, since both individual and social valuations are taken into consideration, the former explicitly and the latter implicitly, it is not the duty of the economist to comment on these valuations or, indeed, elucidate how they have been formed in the first place. Economists relegate this task to behavioral, social, and moral scientists: but as far their own task is concerned, it consists of determining just how the two parties involved in an exchange relationship should allocate their scarce resources in an efficient manner.

This narrow outlook has been challenged in the past thirty years by some fellow economists who probed in earnest the impact of political, social, and legal

²¹³Tullock and McKenzie (1985).

institutions upon individual and collective choice. This group of economic scientists displays a palpable enthusiasm to deal with human beings as they really are—self-interested or not, rational or not—and to render their discipline coextensive with other social and ethical sciences.²¹⁴ In the hands of these researchers, economic analysis has assumed a more descriptive character, not unlike at the time when economics, politics, and ethics were studied together under the rubric of political economy. Modern political economists envision the process of choice as taking place between two agents who are attuned to individual as well as societal demands, and adopt an inductive, descriptive, and ultimately normative approach in their inquiries. They see a comprehensive relationship among economics, politics, and ethics, noting that each of these fields is ultimately concerned with individual wellbeing, though each stresses a different manifestation of that outcome—prosperity, citizenship, and justice, respectively. This eclectic approach has been expanded by integrating some behavioral elements that evidently also play a role in this decisional context. Proponents of the latter approach point out that economic exchange entails not only the assessment of relative prices by the consumer and the supplier, but the whole panoply of behavioral variables, including attitudes, ideologies, demographics, religious values, and so on, which evidently affect decisional outcomes. The synthesis has been enriched even further by the contributions of cognitive scientists, who study how individuals process information, apply heuristic decision rules, and deal with any resulting dissonance.

²¹⁴Hirshleifer (1985:53).

The methodology adopted in this work subscribes to this expanded version of political economy, treating the “demand” and “supply” of ARTs within the framework of an exchange relationship that far transcends the boundaries of conventional analysis of individual preferences. This seems a fitting approach in this particular case, since seemingly individual decisions as conceiving a child, carrying on a pregnancy, giving birth to a child, and rearing that child actually are conspicuously public events around which parents are expected to “answer” to other constituencies’ expectations.²¹⁵ The deliberation of prospective parents to opt for or to reject ARTs serves only to accentuate the social dimension of this decision, as this decision simultaneously involves the interests of the prospective parents, their family and friends, the health practitioner, the future embryo, as well as society in general. We need an operational framework that is fully descriptive of the decisional process involving all four interested parties in connection with ARTs or any other ancillary interventions. This framework, though normative in nature, should not be one that assigns ascendancy to the interests of any one party at the expense of other relevant ones. A discussion of autonomy is necessarily involved in this endeavor, but this should not be on a par with the standard discussion of individual preferences in conventional economic theory. To stress the divergence between the two modes of analysis, let us use preimplantation genetic diagnosis (PGD) as a case in point.

²¹⁵ A Brookes, “Women’s voices: Prenatal diagnosis and care for the disabled,” *Health Care Analysis* 9 (2001:134).

Alternative approaches are observed with regard to PGD. Some might espouse the ethical position that the interests of prospective parents should supercede that of the embryo, the practitioner, and/or society. Others might contend that the physician's expert opinion should supplant all other opinions. Still others give primacy to the interests of the embryo. Finally, we have lived through eras in which the interests of society were deemed superordinate to those of others by proponents of eugenics.²¹⁶ Each one of these ethical perspectives presents a forceful argument. Even society's urge to apply the knowledge of heredity to the genetic "improvement" of the human species is compelling in certain circumstances.²¹⁷ Hence, it should be the duty of researchers considering the ethical implications of PGD to make clear *whose* interest they are probing—that of the embryo, prospective parents, healthcare practitioners, society, or some combination—and what principles they are heeding. Considering that a full accommodation of opposing ethical frameworks will not be possible, a researcher may intend to trade off some primary or secondary principles for some others. If

²¹⁶Early Soviet geneticists saw eugenics as the biological component of social development and got involved in intensive research until the 1930's, when it was picked up by Nazi leaders. After the World War II, interest in eugenics was revived in the Soviet Republic, and went on until 1965, when the most eminent proponent T. D. Lysenko was retired in the aftermath of "The Great Stalin Plan for the Transformation of Nature" debacle.

²¹⁷D. Suzuki and P. Knudtson, *Genethics: The Ethics of Engineering Life*, London: Unwin Hyman (1990:20), immediately adding that the dark side of that knowledge prevailed over the bright side of eugenics, allowing special-interest groups to exploit the short-sighted, self-serving, and ultimately cruel ends of this morally wrong practice (1990:23). Vestiges of crass eugenics are observed in everyday life. An ad in *The New York Times*, for example, plainly announces that the "internationally renowned donor egg program at Genetics & IVF Institute ... in Washington, DC" offers eggs culled from "donors with special accomplishments, talents, and ethnicity, ... includ[ing] many Doctoral donors in advanced programs" (September 26, 2004: Section 9:15).

this is what the researcher has done, then it is their duty to make this process clear. It is on this note that the following sections concentrate on the interplay involving the four constituents implicated in the use of PGD, beginning with an argument that is eminently applicable to this scrutiny, patient autonomy.

B) THE ISSUE OF PATIENT AUTONOMY IN PGD. Why are so many prospective parents at high risk for genetic diseases ambivalent about fetal diagnosis? In a recent study of parents of children with cystic fibrosis, forty-four percent reported they would resort to prenatal fetal diagnosis to prepare themselves for the birth of a child with cystic fibrosis, twenty-eight percent said they would do so to get information so they could make a decision about how to proceed, and only twenty-eight percent reported that they would resort to prenatal screening with the intention to terminate the pregnancy should a genetic disorder be detected.²¹⁸

In order to address this issue, we must examine the moral ground underlying the concept of individual autonomy that “for a choice to be a free one, it is necessary that *several* alternatives for action are available.”²¹⁹ Does this precept always yield consistent results? Most economists would agree with this

²¹⁸Wertz (1993:249), referring to D. C. Wertz *et al.*, “Attitudes toward the prenatal diagnosis of cystic fibrosis: Factors in decision making among affected families,” *American Journal of Human Genetics*, **50** (1992:1077-85).

²¹⁹E. Hildt, “Scientific contribution: Autonomy and freedom of choice in prenatal genetic diagnosis,” *Medicine, Health Care and Philosophy* **5** (2002:65), referring to Ronald Dworkin, *The Theory and Practice of Autonomy*, Cambridge: Cambridge University Press (1988), for evidence. Ironically, Dworkin is quite apprehensive about the presumed correlation between more alternatives and optimal choice. See Chapter 5 of his second 1988 book, aptly entitled: *Is More Choice Better Than Less?*

statement, though some ethicists do not. The ethical and legal scholar Ronald Dworkin, for one, warns that if one is faced with two doors behind which are the proverbial lady and the tiger, one does not want one's choices increased by adding three more doors behind all of which are more tigers.²²⁰ To extrapolate from this metaphor and to supply a more fitting example along the lines of this work, it has been proposed that making voluntary active euthanasia an available alternative to palliative care patients might actually make them worse off, since the very existence of this choice denies them the alternative of staying alive by default.²²¹ This may occur because, ordinarily, people's continued existence is viewed by them as a given, a fixed condition with which they must cope; but when they are offered the option of euthanasia and they reject it, they can be held responsible for their condition and be asked by others to justify their decision.²²² This may be the explanation of what actually happens to prospective parents at risk for giving birth to a child with genetic disease who reject PGD. To make things more ironic, the possibility of PGD opens up new options, such as demanding an abortion for a fetus detected to have a genetic affliction, thus complying with the recently proposed concept of improved autonomy, but without rendering the more autonomous decision-maker better off.

²²⁰Dworkin (1988:65).

²²¹D. W. Brock, "Voluntary active euthanasia," *Hastings Center Report* 22 (1992:16).

²²²Brock (1992:16-19).

Hildt, the eminent proponent of this view, seems taken by the conviction that the availability of multiple alternatives is an outward expression of Western culture, stemming from the principle of respect for individual autonomy, which, according to Hildt, gives flesh and blood to the greater principle of individual freedom and choice in private as well as political life, a staple of liberal Western tradition.²²³ As a proof of his contention, Hildt points to the increasing availability of PGD in Western societies.²²⁴ Hildt's line of thought can be criticized from two perspectives. First, the Eastern-Western dichotomy is not accurate. According to Viville *et al.*, in Hildt's own Germany, the Embryo Protection Act effectively imposes a ban on the practice of PGD.²²⁵ Conversely, the laws of many a decidedly non-Western country, say Turkey or Tunisia, specifically allow PGD. The second flaw, excerpted in the above paragraph, is more egregious a contention, for, notwithstanding any cultural differences, Hildt's postulate that in order "for a choice to be a free one, it is necessary that *several* alternatives for action are available" is not proven by evidence. In fact, a decision-maker may freely and willfully restrict the number of options, even to one. Some decision-makers adhere to one or a limited number of alternatives to minimize the cost of

²²³E. Hildt, "Scientific contribution: Autonomy and freedom of choice in prenatal genetic diagnosis," *Medicine, Health Care and Philosophy* 5 (2002:65).

²²⁴Hildt (2002:65).

²²⁵S. Viville. *et al.*, "Ethical perspectives and regulation of preimplantation genetic diagnostic practice," in Harper *et al.* (eds.), *Preimplantation Genetic Diagnosis*, Chichester, West Sussex, England: John Wiley & Sons, Ltd. (2001:237).

information. Dworkin reminds us of the consuming nature of such choices as trying to buy a car or house, or choosing a college or doctor.²²⁶

There is a keener strand of analysis of patient autonomy. It is provided by David Rothman, who discerns a growth of autonomy in the U.S. healthcare environment in the past twenty-five years and applauds this development for having extended consumers' influence over a wide range of clinical decisions. Specifically, according to Rothman:

Civil rights, women's rights, gay rights, children's rights and the center of our attention here, patient rights, all rose to prominence in the 60s and 70s, and all shared a similar mind set. It was characterized, in the first instance, by a profound suspicion and distrust of constituted authority—whether in familial, educational, community, political, or medical institutions. The movements shared an unwillingness to accede to the discretionary authority of whites, men, husbands, parents, clinical investigators, mental hospital superintendents, elected officials, and of course, doctors, especially when they were males practicing obstetrics, gynecology, or psychiatry. All movements subscribed to a fierce anti-paternalism, a dogged rejection of the principles of beneficence, a persistent determination to let constituents speak for themselves and define their own interests.²²⁷

This is a different argument than Hildt's. What Rothman is describing is not a change in the sheer quantity of alternatives available to patients, but in the manner in which patients have come to gain more alternatives *at the expense of*

²²⁶Dworkin 1988:66.

²²⁷D. J. Rothman, "The origins and consequences of patient autonomy: A 25-year retrospective," *Health Care Analysis* 9 (2001:256).

those available to physicians. Similarly Tristram Engelhardt deems patient autonomy as a liberating experience to the extent that it reflects one's own interests, desires, inclinations, and concerns, whatever these may be.²²⁸ In Engelhardt's own words:

One is autonomous in the sense of choosing that by which one will be determined or ruled. Autonomy in the first case is acting in accordance with one's own nature as a moral agent, requiring that there be nothing alien to the self by which the moral agent determines the self. While autonomy in the second sense can be capricious and willful, and even alien to one's developed character as moral agent, autonomy in the first sense is restricted to those choices appropriate to or expressing the nature of moral agents, or at least one's own nature. The second sense is a self- or volitionally-directed autonomy; the accent is on the will of the person to determine choices and actions.²²⁹

Another commentator, Alfred Tauber, takes a more guarded approach to patient autonomy *vis-à-vis* Engelhardt. He views the medical ethics movement of the 1960s and 1970s as a general attempt to reclaim humane values from encroaching technology and a debasing material view of the world.²³⁰ He elaborates:

My position, simply stated, is that while the *restoration* of a patient's sense of autonomy is the ultimate aspiration of the clinical encounter, autonomy itself can hardly serve the foundation

²²⁸T. H. Engelhardt, "The many faces of autonomy," *Health Care Analysis* 9 (2001:286).

²²⁹Engelhardt (2001:286).

²³⁰A. I. Tauber, "Historical and philosophical reflections on patient autonomy," *Health Care Analysis* 9 (2001:303).

of medicine's moral philosophy. By holding autonomy to be *the* governing principle, I believe we only obscure the doctor-patient relationship and confuse the moral standing of the patient. I am not attempting to banish self-governance as a moral principle from medicine, but ... [I] argue why 'autonomy' is such a problematic concept not only for medicine, but for culture-at-large.²³¹

The result of this line of thought is that patients are concerned far less with their political or legal autonomy than with getting better, and, in order to facilitate the process of healing, they willingly subordinate their autonomy to other identifications, that is, admit their dependent status *vis-à-vis* their fundamental sense of personhood.²³² This behavior is plainly observed in IVF clinics with regard to PGD. Prospective parents who request PGD, acting under the influence of a slew of variables, are hardly knowledgeable about the medical processes involved beyond a minimal threshold. In many instances, as demonstrated by C. C. Schneider, these individuals consciously shy away from decision-making in the belief that by doing so they would be better protecting themselves as well as those of the other three participants.²³³

One issue that is particularly disconcerting for the other three components in this decisional equation is a patient's request to use PGD for gender selection. Sensing a propensity in preferring male children over females, most authors have

²³¹Tauber (2001:300). Emphasis in the original.

²³²Tauber (2001:314).

²³³See C. C. Schneider's *The Practice of Autonomy: Patients, Doctors, and Medical Decisions*, Oxford and New York: Oxford University Press (1988).

promptly declared that practice morally wrong. Dorothy Wertz and John Fletcher, for instance, find socially-motivated gender selection through PGD a decidedly unethical practice, first for allocating scarce health resources to non-disease situations and, second, for constituting the first step along a “slippery slope” towards cosmetic choices for height, weight, eye or hair color.²³⁴ Yet, the same authors also state that the use of PGD to avoid genetic disability is a valid one, since such disability would inflict suffering for parents as well as affected children.²³⁵ To make the debate even more complex, feminist authors argue that they detect in this traditional line of reasoning the perpetuation of the assumption that all adverse consequences of illness for social, psychological, economic, and physical functioning flow from the illness itself, discounting the reality that most of these problems are, in fact, attributable to social arrangements subordinating women in society based on their biology.²³⁶ However, the latter authors, upon considerable soul searching, reach the conclusion that knowingly bringing children into the world destined to experience physical and psychological disability is morally wrong.²³⁷ It seems, accordingly, that the principle of patient autonomy pertaining to the utilization of PGD should be upheld, except when

²³⁴D. C. Wertz and J. C. Fletcher, “Prenatal diagnosis and sex selection in 19 nations,” *Social Science & Medicine* 37 (1992:1364).

²³⁵Wertz and Fletcher (1993:1363). Wertz and Fletcher concede that sex selection in the absence of x-linked disease is not always trivial, as in the case of prospective parents having four daughters but no sons (1993:1362).

²³⁶A. Asch and G. Geller, “Feminism, bioethics, and genetics,” in S. M. Wolf (ed.), *Feminism and Bioethics: Beyond Reproduction*, New York: Oxford University Press (1996:337).

²³⁷Asch and Geller (1996:337).

invoked for morally wrong reasons, such as gender selection and cosmetic concerns. Prospective parents who are carriers of genetic diseases have much to gain from this paradigm. Rapp remarks:

Advanced maternal age is not the only 'risk' that genetic discourse can describe, and whose consequences can be diagnosed. Increasingly, autosomal recessive conditions, many of which run at heightened frequencies in specific ethnic groups, can also be picked up. Thus, sickle-cell anemia (among people of African descent), Tay-Sachs disease (most prevalent among those of Ashkenazi Jewish background), and the thalassemias (blood diseases that are most common among Mediterranean and Asian populations) can now all be diagnosed ... While some of the available screens are close to 100 percent accurate ... others are probing for conditions caused by a series of functionally related genetic mutations which vary between families and among ethnic groups ... [T]he positive diagnosis of a given condition cannot predict the severity of any individual case. Even a 100 percent accurate diagnosis of sickle-cell anemia does not indicate how mildly or severely [it will] affect a particular fetus ... nor can a diagnosis of cystic fibrosis or the late-blooming Huntington's disease predict age of onset and symptoms ... Thus testing often leads to additional cascades of statistically expressed possibilities which the [parent] must assess.²³⁸

All in all, the idea that couples seeking PGD do so in order to weed out "defective" embryos is not categorically valid. There exist situations in which prospective parents act contrary to this notion. To illustrate this possibility, Heather Draper and Ruth Chadwick (1999) formulate a scenario involving a couple, both deaf from a genetically defined syndrome, accepted for IVF:

²³⁸R. Rapp, *Testing Women, Testing the Fetus: The Social Impact of Amniocentesis in America*, New York and London: Routledge (1997:72-73).

Once on the programme they were offered [PGD] by a well-meaning clinician who assumed that they would not want any of their children to be deaf. He is shocked when they steadfastly insist that out of their nine embryos the one with congenital deafness be implanted first ... They justify their decision by arguing that their quality of life is better than that of the hearing. As far as they are concerned, giving preference to the affected embryo is giving preference to the one which will have the best quality of life.²³⁹

In this and other conceivable cases, patient autonomy may give way to choices that are inconsistent with the premise that all parents would prefer a genetically healthy baby. A prospective parent's ethical perspectives may directly clash with this premise taking the form: "Who is to impose their preference over my lifestyle and that of my prospective child?" As the diagnostic prowess of PGD increases to the point of identifying conditions whose onsets are further away from the point of diagnosis, such as adult-stage cancer or schizophrenia, even more friction is likely to arise between the prospective parent and the practitioner, as well as society in general. To illustrate, the practitioner may consider a late-onset genetic disease a "normal" condition while the parental couple may see it as a genetic affliction, or vice versa. Problems of this sort require us to jump the fence and examine the ethical framework of the health practitioner in question.

C) THE ISSUE OF PATERNALISM IN PGD. Should the second participant in this equation, the physician, be fully bound by the decision of a well-informed patient or should doctors intervene in the decision processes for their patients' good? If the answer is in favor of non-intervention, should the doctor's acquiescence be

²³⁹H. Draper and R. Chadwick, "Beware! Preimplantation genetic diagnosis may solve some old problems but it also raises new ones," *Journal of Medical Ethics* **25** (1999:116).

exceptionless? To illustrate, the rule of non-interference dictates that the doctor allow a woman resolved to carry an anencephalic fetus to term. But should doctors implant embryos if they know that they are at high risk of anencephaly, even if parents request it?²⁴⁰ Providers of PGD play several roles in the development and implementation of safe and reliable techniques as well as in the assessment of the genetic status of a preimplantation embryo: but in doing so, they find themselves at the intersection of multiple and conflicting ethical decision junctures.²⁴¹ One conflict that naturally arises in medical encounters involves paternalism. Dworkin defines paternalism as “interference with a person’s liberty of action justified by reasons referring exclusively to the welfare, good, happiness, needs, interests, or values of the person being coerced,” and deems it morally acceptable only under these conditions.²⁴² Joel Feinberg expands on this rather restrictive definition, allowing paternalism under any and all conditions of protecting the individual from harm and promoting the individual’s own good.²⁴³ He argues that these dimensions can present themselves in weak and strong forms. In its weak form, paternalistic care givers intervene when they believe some other person will suffer harm as a result of lack of choice or knowledge, such as when the physician who discerns that a prospective parent is a carrier of a serious genetic disease orders PGD without even obtaining the

²⁴⁰J. Savulescu, “Should doctors intentionally do less than the best?” *Journal of Medical Ethics* 25 (1999:121).

²⁴¹Viville (2001:231).

²⁴²Dworkin (1988:121), referring to his 1972 work.

²⁴³J. Feinberg, “Legal paternalism,” *Canadian Journal of Philosophy* 1 (1977:106-124).

parent's specific consent. In the strong form of paternalism, intervention to prevent harm or to promote good occurs to curb the voluntary and informed actions of the person who is being protected:

Laws and regulations concerning the wearing of seat-belts, smoking in public places, drinking and driving, carrying weapons and so on, may all be construed as preventative measures introduced precisely in order to protect the individual from the injuries accruing from his own voluntary choices. When we turn to more technical areas, like medicine, the paternalistic argument is still more persuasive. A well-known example here would be the case of a doctor overruling the religious convictions of a Jehovah's Witness and forcing him to have a blood transfusion. In this case the doctor's utilitarian concern to produce the greatest happiness overrides any respect he may otherwise have had for the patient's autonomy. If he further believes that suffering can be reduced by discarding the normal moral constraints of promise-keeping and truth-telling, then so be it.²⁴⁴

Evidently, both in bioethical discourse and in the medical profession's official codes and policies, paternalism is envisioned as a not-so-invisible hand of the provider in the exchange process involving ARTs. Many physicians would consider forcing a blood transfusion upon a Jehovah's Witness to be wrong, even if the law may allow it. But the physician is only one part in the exchange equation. What needs to be explored is whether the *patient* objects to paternalism. Some patients may see no problem with the weak or even the strong case of paternalism that may emerge in medical encounters. In fact, some may liken the relationship between patients and their physician as a fiduciary contract very

²⁴⁴M. Palmer, *Moral Problems in Medicine: A Practical Coursebook*, Toronto: University of Toronto Press (1999:133).

much like the one that exists between clients and their attorney, and may actually *expect* their physician to act on their behalf when confronted with difficult choices.²⁴⁵ The problem with this line of reasoning is, naturally, that there may always be some members who would prefer to cling to their autonomy under any and all circumstances. What is the doctor to do under that circumstance? Dworkin supplies the answer:

Although the best solution would be to exempt the minority, considerations of administrative and economic efficiency may make this solution very expensive. It is both more effective and cheaper to put fluoride in the community water supply than it is to distribute fluoride pills to those who want them or to supply nonfluoridated water to those who do not want fluoride. If justice takes precedence over efficiency, the solution is clear ... [Otherwise] some balancing of interests is appropriate ... The relevant conditions are: (1) that the majority interest must be important (such as health); (2) that the imposition of the minority must be relatively minor (they have to buy their own water); and (3) that the administrative and economic costs of not imposing on the minority would be very high. However, fairness requires that if there are economic costs to the minority (such as purchasing nonfluoridated water), they should be borne by those who gain.²⁴⁶

Dworkin's paradigm, as applied to PGD, helps ease the presumed conflict between patient autonomy and physician paternalism. But consider that two other parties are also involved in this decisional context—the embryo and society.

²⁴⁵The cultural dimension cannot be discounted in this context, for there may be some cultures in which patients may demand a measure of paternalism from their doctor and perceive a doctor's respect for patient autonomy, and the resulting non-intervention, as an act of cold-heartedness on the part of the doctor. My personal, and admittedly anecdotal experience, is that many Turkish patients demand active participation of their doctors in medical deliberations and frequently insist that the doctor make decisions on their behalf.

²⁴⁶Dworkin (1988:128).

Recall the scenario involving the deaf couple. Had the situation involved only the couple and their doctor, the doctor may have had no authority to challenge the couple's wish. But since the interests of the embryo and society are simultaneously involved in this deliberation, the decision process spills over the dyadic boundary. Dworkin, anticipating this impasse, suggests a way out of it:

If we conceive of autonomy as the capacity of individuals to critically reflect on and take responsibility for the kind of persons they want to be, then we stop people from becoming slaves in order to preserve their future ability to defend the kind of lives they want to lead ... [But] there is nothing in the idea of autonomy that precludes a person from saying, "... I define myself as a slave and ... [m]y autonomy consists of being a slave." If this is coherent, and I think it is, one cannot argue against such slavery on grounds of autonomy. The argument will have to appeal to some idea of what is a fitting life for a person and, thus, be a direct attempt to impose a conception of what is "good" on another person. If, as I suspect, any person who adopted the above attitude would argue for it on grounds of maximizing some other good, the case may reduce to a safety-case as one of mistaken calculation about the best way of securing a person's good as conceived by her or him.²⁴⁷

This is exactly what happens in decisions involving PGD under normal conditions. Most physicians centrally consider the interests of both the parents and the future child in medical decisions. After all, these obstetricians and gynecologists act in compliance not only with their solemn oath, avoidance of harm and provision of the best treatment for their patients, but also with their entire post-graduate training stressing the sanctity of human life, be it that of the parent or the incipient child. This orientation often compels physicians to take a

²⁴⁷Dworkin (1988:129).

more active role in medical encounters, considering that medical knowledge is asymmetrically distributed between themselves and their patients, and so-called “informed” consent may not consist of what the term denotes. Hence, doctors may be inclined to exercise a weak or strong form of paternalism under that assumption. The inclination may be even more marked in cases involving PGD, since in such cases the interests not only of prospective parents, but also the embryo and the community come to the fore. This may propel physicians even more compellingly to take the matter into their own hands on the basis their perceptions of sound healthcare, which may be more circumspect than that of their patients. Viville elaborates:

This ethic is underscored by the dual status of PGD techniques as experimental protocols and clinical adjunct to IVF. The unrestrained pursuit of knowledge as a fundamental value of science and scientists and the ethic of care underlying clinical practice have posed serious demands on the PGD practitioner. The discussion regarding professional responsibility to establish guidelines that integrate these two roles has met with limited agreement on what constitutes ethical and appropriate research procedures as well as disclosure and promise to patients in shifting PGD from the laboratory to the clinic.²⁴⁸

The above arguments elucidate one important conclusion: seekers and providers of PGD jointly take into consideration the interest of the embryo as well as that of the respective community with which they have an affinity. While the embryo and the community obviously do not actively participate in this process of choice, the seekers and providers of PGD factor in the interests of these parties in

²⁴⁸Viville (2001:231).

their decision concerning the appropriateness of this particular technology. Accordingly, the expanded paradigm of political economy elaborated in the previous chapters, one in which the choice makers aim to generate results that are not only optimal from the point of view of economic equilibrium, but also satisfactory from the point of view of the embryo and society in general, is eminently applicable in this decisional environment.

That both the seekers and the providers of PGD are positioned to generate results that are satisfactory under the prevailing legal, ethical, and moral as well as economic constraints evokes a heuristic rather than axiomatic decision-making process, one that is directed to produce a satisfactory outcome, that is, to minimize cognitive dissonance. What remains to be seen is whether this integrative decisional paradigm can be generalized to include all physician-assisted reproductive technologies besides PGD. In many instances, doctors make a normative judgment about the rightness of a particular act, which might have a different significance with respect to what they should do compared to their judgments of what parents should do.²⁴⁹ Current bioethical literature presents scant coverage on specific moral problems besetting the providers of PGD in particular. Suppose a doctor detects that the prospective parents' insistence on PGD hinges on furthering their selfish desires and satisfying their consumeristic preferences by seeking to influence the traits their offspring will have.²⁵⁰ Should

²⁴⁹Savulescu (1999:121).

²⁵⁰M. A. Crossley, "Choice, conscience, and context," *Hastings Law Journal* 47 (1999:1231).

the doctor force the couple to forgo PGD? Should the doctor stop assisting these individuals and refer them to a more compliant colleague? In short, should the doctor's own autonomy override patient autonomy when there is clash between the two manifestations of free will?

The reflexive answer that a doctor should serve the best interests of his or her patients goes only so far. This implies the sovereignty of the maxim of maximization of utility, with all the problems concerning the discernment, measurement, and comparison inherent to this eminently utilitarian concept. Recall the scenario in which the deaf parents register their preference of bringing to life an offspring who is also deaf. What is the doctor to do? The rule of maximization of utility dictates that the doctor transfer the "best embryo" from among those that are available. But whose valuation of "best embryo" should prevail in this case, that of the prospective parents or that of the doctor? Draper and Chadwick do not offer a satisfactory solution. Savulescu offers one, but what he expounds culminates in an outcome that is suboptimal for the child as well as the parents, hence invalidates the principle of maximization:

[T]here is a reason to bring into existence a child who will have a long happy life rather than of profound suffering. This is true even if parents might want a child who will experience great suffering rather than one who will have a happy life. In health care in general, the importance given to personal liberty and autonomy might provide reasons justifying some degree of submaximisation. In reproduction, any claim on medical assistance has to do with reproductive rights (rather than liberties). It is far from clear how much assistance individuals are entitled to claim. Moreover, it is far from clear that parents also have "a right" to an option which

results in the birth of a child with less prospect of a rewarding life.²⁵¹

The above argument is based on the premise that doctors should not be required categorically to give up a state of nature that they consider objectively valuable for a relevantly different state of affairs which their patients may deem more valuable, even if it results in a suboptimal outcome for a patient who prefers the alternative solution. Some critics find this reasoning “overly restrictive,” if not downright “bizarre.”²⁵² Restrictive, because Savulescu ties patients’ wellbeing to some undefined “objective value,” and bizarre, because he does not count the principle of respect for patients’ freedom of choice among objectively valuable states of affairs.²⁵³ Evidently, providers of PGD play important roles in the development and implementation of safe and reliable techniques as well as the assessment of the genetic status of a preimplantation embryo.²⁵⁴ This multifaceted task propels these healthcare providers towards multiple ethical dilemmas involving patient autonomy and paternalism. This problem is addressed in the next chapter.

I discussed in this chapter a feasible middle ground between political economy and ethics, focusing on the thorny questions of patient autonomy and

²⁵¹Savulescu (1999:123).

²⁵²J. Harris, “Doctors’ orders, rationality and the good life: commentary on Savulescu,” *Journal of Medical Ethics* **25** (1999:127).

²⁵³Harris (1999:127).

²⁵⁴Viville (2001:231).

paternalism. Political economic theory, though considerably relaxing the standard economic view of individual autonomy, still retains it for methodological reasons while rejecting paternalism. As for ethics, the issues of autonomy and paternalism are very much alive, with different ethical perspectives proposing different views in this regard. These problems were elaborated in a contextualized analytical milieu utilizing PGD as a case in point. The conclusion of this analysis is that it is within our reach to construct an integrated ethical model of choice involving ARTs by melding not the primary, but the secondary principles of different ethical theories. What needs to be done at this juncture is to meld this ethical construct with the sufficiently revamped operational framework of political economy. It will be shown in the next chapter that an ethic of care provides a coherent basis for this ethical construct and, additionally, effectively grafts itself onto the operational framework offered by political economy.

CHAPTER 5

THE COMMON GROUND BETWEEN POLITICAL ECONOMY AND AN ETHIC OF CARE IN ASSISTED REPRODUCTION

Two apparently opposing perspectives dominate discussions revolving around people's health and wellbeing: economic and ethical. Implicit in the dichotomy is the presupposition that researchers decide at the onset of their research protocol as to whether to heed an amoral or moral mode of inquiry. Authors adopting an ethical approach deem the economic perspective an overly narrow view of the world *vis-à-vis* the ambiguities endemic to the access to and provision of healthcare. Their conclusion is not frivolous, since ethical arguments indeed contain certain strengths: a critical and questioning approach to received opinion on morality; an interest in ensuring that the moral premises used in a particular argument cohere with other basic beliefs and hence are part of a unified moral outlook; and a relative lack of partisanship and stridency.²⁵⁵ These qualities are not radically different in nature from those that might be put forward by economists or other social scientists as they reflect nothing more than standard virtues of good scholarship; but, their presence in contemporary writing on ethics is indicative of a momentous transformation in that field, which previously tended to display well-articulated expressions of personal attitudes and beliefs, but not

²⁵⁵D. Wikler, "Philosophical perspectives on access to health care: An introduction," in *Securing Access to Health Care*, Vol. 2, Pt. 2, Appendix F, The President's Commission Report, Washington D. C. (1982:111).

proofs and demonstrations to support policy decisions.²⁵⁶ Authors of the standard economic mold, meanwhile, have continued to judge individual human actions in purely instrumental terms as a result of their conceptualization of the exchange environment as an autonomous and self-consistent realm in which an adequate understanding of what transpires between individuals could be derived entirely from economic postulates.²⁵⁷ The strength of economic arguments, accordingly, consists of the fact that a prevailing consistency can be revealed in human action without any reference to institutions or history. Consequently, it would be possible, according to adherents of the economic method of inquiry, to construct by the use of the appropriate axioms a universal praxeology so general that its system would embrace not only all the patterns of action in the world in which we live, but also patterns of action in worlds whose conditions are purely imaginary.²⁵⁸ This epistemological stance is not too far from that of ethics, since both ethical rules, precepts, or principles and economic axioms, theorems, or categorizations are derived not from the observation of facts, but through deduction from some aprioristically determined fundamental premise or premises.

Surprisingly, the historical roots of ethic of care can be traced to the same two representatives of Scottish Enlightenment, Adam Smith and Frances

²⁵⁶Wikler (1982:111-112).

²⁵⁷Bell (1981:47).

²⁵⁸L. von Mises, "The science of human action," in *Epistemological Problems of Economics*, Princeton: Princeton University Press (1960), reprinted in F. Hahn and M. Hollis (eds.), *Philosophy and Economic Theory*, Oxford and New York: Oxford University Press (1979:62).

Hutcheson, whose contributions were presented in Chapter 1. These moral philosophers discerned an extensive common ground between ethics and economics, and attributed this eventuality to the fact that both areas of scholarship are directed to develop universal standards of human conduct and both believed that human capacity to reason would provide the necessary *modus operandi*.

To Hutcheson, reason constitutes not the propelling factor, but an accompanying force in reaching a moral station. He challenged the primacy of reason in this endeavor stressing that members of society could attain a morally admirable state of nature by mobilizing their moral sense exclusively. In other words, moral sense works like reason. It directs people to morally meaningful outcomes, such as feeling affection not only for people who are close to us, but also those who are distant. Hutcheson posited that, while universal moral sense and moral action were certainly correlated, lesser moral values (*i.e.*, moral sentiments) were learned, hence exhibiting differences from person to person. Put differently, the universal moral sense leaves room for people's individual moral sentiments, which are determined to a great extent by people's education, daily associations, and their station in the political society.²⁵⁹ Tronto writes in this connection:

Hutcheson provides us with a good benchmark for the way in which the moral sense operated in a society in which the political order was still seen as providing a framework for moral judgments. Hutcheson was aware of the need for people to have some

²⁵⁹Tronto (1993:42), referring to Hutcheson's *Inquiry*.

attachment to the concerns of humans who were far away from them, but for the most part Hutcheson emphasized the conventional and local as educators and shapers of moral sense. As the possibility of a correctly virtuous political order receded, and as the requirement to deal with more distant others grew more imperative, the optimistic compromise that Hutcheson suggested no longer seemed to work very well.²⁶⁰

Smith relied more keenly than Hutcheson on the role of rationality and self-interest in generating socially optimal solutions. Yet, Smith observed that different conduct is exhibited, in fact expected, of those who are at different stages and stations of life or are members of particular professions and ranks, stressing that the general style and character of behavior that is most suited to a particular type of person assumes the status of the “normal” behavior of such persons.²⁶¹ In Smith’s own words:

The propriety of a person’s behaviour depends not upon its suitableness to any [given] circumstance of his situation, but to all the circumstances which, when we bring his case home to ourselves, we feel should naturally call upon his attention. If he appears to be so much occupied by any one of them as entirely to neglect the rest, we disapprove of his conduct. ... We cannot expect the same sensibility to the gay pleasures and amusements of life in a clergyman which we lay our account with in an officer. The man whose peculiar occupation is to keep the world in mind of that awful futurity which awaits them, who is to announce what may be the fatal consequences of every deviation from the rules of duty, and who is himself to set the example of the most exact conformity, seems to be the messenger of tidings which cannot, in propriety, be delivered either with levity or indifference.²⁶²

²⁶⁰Tronto (1993:43).

²⁶¹T. D. Campbell, *Adam Smith’s Science of Morals*, London: Allen and Unwin (1971:142).

²⁶²Smith (1759a:2930-294).

As such, Smith presents an argument largely in line with an ethic of care as he explicates what is expected of a morally admirable care-giver. Smith wrote elsewhere in *The Theory of Moral Sentiments*:

we can never form any judgment concerning ... our own sentiments ... unless we remove ourselves, as it were, from our own natural station, and endeavour to view them as at a certain distance from us. But we can do this in no other way than by endeavouring to view them with the eyes of other people, or as other people are likely to view them. Whatever judgment we can form concerning them, accordingly, must always bear some secret reference [to what] ought to be the judgment of others. We endeavour to examine our own conduct as we imagine any other fair and impartial spectator would examine it. If upon placing ourselves in his situation, we thoroughly enter into all the passions and motives which influenced it, we approve of it, ... otherwise, ... condemn it.²⁶³

Accordingly, it is human conscience that checks the natural preference that individuals have for their private pleasure and serves as a source of moral acts. More specifically, individual members of society, motivated by self-interest, will if left to themselves unwittingly cause harm upon others notwithstanding the faculty of reason with which they are endowed. Fortunately, however, this will not be the case, since people grow up in a society. As such, it becomes a matter of habit for them to regard their conduct from the point of view of an impartial spectator. Thus it is moral conduct, rather than self-interest, that becomes natural

²⁶³Smith (1759a:161-162).

to them. This internal voice, representing the attitudes of the impartial spectator, achieves in its developed form a certain autonomy and independence from the real spectators without.²⁶⁴ Tronto keenly discerns Smith's construct of impartial spectator. She comments that Smith, while drawing upon universal notions of human conduct to direct our sympathetic responses to concrete problems, eventually retreated from a pure, universal theory of moral sentiments and moved toward a model of human conduct moderated by a principle of self-command.²⁶⁵ Smith tied the deleterious effects of self-interest to ignorance and believed that public education would help bolster the morality of large swaths of underprivileged citizens, including workers and women.

The above discussion intimates the sameness of the historical roots of political economy and ethics, or, by extension, of an undeveloped theory of an ethic of care. It is in this connection that Tronto covers the key figures of Scottish Enlightenment. She intends to show that an ethic of care has a reflection not only in the long and rich tradition of moral theory, but also in the very roots of political and economic spheres of scholarship. Unfortunately, most ethicists, political scientists, and economists still fail to discern a common epistemological ground among these disciplines.

²⁶⁴Campbell (1971:151).

²⁶⁵Tronto (1993:47).

To give an example, the authors of the RCNRT Report squarely fall into this category. They consciously take side with ethicists, having found in the economic method of inquiry a dismal disregard for humanity:

From a narrowly self-interested or economic point of view, some people's lives may not matter to others ... From a moral point of view [conversely], all people matter in and of themselves. It matters how well their lives go, and if our decisions affect their well-being, then we must take that into account. Adopting a moral point of view thus requires sympathetic attention to people's interests and circumstances, understanding how things look from their perspective, and taking account of their well-being.²⁶⁶

One reason for their trepidation regarding economic logic is that most ethicists think individual economic decision-making is directed to the attainment of predetermined goals *at the expense of* the interests of other people. It should be obvious at this point that the apprehension is unwarranted, as there is no such postulate in economic logic, even in its most orthodox strand—say, the one expounded by Milton Friedman. The seemingly ominous behavioral construct *homo oeconomicus* is merely an analytic instrument, nothing more than a generalization serving to interpret the effects of human behavior in a particular sphere of action, a tool not unlike the concept of “role” used in social psychology or the model of “ideal type” used in Weberian sociology.²⁶⁷ More important, this

²⁶⁶RCNRT Report, *Proceed with Care: Final Report of the Royal Commission on New Reproductive Technologies*, Volume 1, Chapter 3: “What Guided Our Deliberations: Ethical Framework and Guiding Principles,” Minister of Government Services Canada (1993:51).

²⁶⁷F. Machlup, *Methodology of Economics and Other Social Sciences*, New York: Academic Press (1978). Refer to Part Four, especially Chapter 11.

model of conduct has long ago been revised as a generalization dependent upon social, political, cultural, legal, and moral imperatives.²⁶⁸ It is from this line of reasoning that has emerged the model of Political Economic Man as a member of society who intends to satisfy his personal as well as collective goals. Political economists see these two spheres of goals as being complementary to each other, and trace the total satisfaction of Political Man in the simultaneous fulfillment of these objectives.

This new orientation has freed economists from examining human behavior exclusively under ideal private market conditions. In fact, political economists routinely address problems of choice under *imperfect* conditions, such as market rigidities, spillovers, asymmetric distribution of knowledge, individuals' inability to rank their preferences in accordance with the axioms of consistency, completeness, and transitivity, and so on.²⁶⁹ As such, political economists have turned their attention to determine not what economic agents *ought* to do under paradigmatic circumstances, but what they *would* do as elicited from their preferences, perception, and computational skills under the applicable exogenous conditions.²⁷⁰ In doing so, they have abated the axiomatic intensity of their discipline, demonstrating their resolve to engage in inductive, normative

²⁶⁸Refer to Downs (1957), Boulding (1969), and Sen (1987), for instance.

²⁶⁹Refer to Tversky and Kahneman (1974), Kahneman and Tversky (1979), and Thaler (1980) for a full discussion of these concepts.

²⁷⁰F. Hahn and M. Hollis, "Introduction," in F. Hahn and M. Hollis (eds.), *Philosophy and Economic Theory*, Oxford and New York: Oxford University Press (1979:14). Emphasis added.

discourses directed to reveal the actual relationships that unfold between seekers and providers of goods and services. Accordingly, they proved instrumental in both explaining the nature and predicting the results of individual choice and offered solutions that are both efficient, and equitable.

Just as political economists mellowed the axiomatic rigidity of price theory, so too have many bioethicists moderated the personal and strident drift of their discourse and concentrated their efforts to generating remedies for a given category of problems—say, an ethical access to healthcare—rather than to developing grand rules to govern all moral debates. The RCNRT Report is a prime example of this orientation. In that work, the Commissioners, adopting the ethics of care as their analytic framework, have enumerated eight principles that present a concrete expression to their ideal of care concerning ARTs: (1) Individual Autonomy, (2) Equality, (3) Respect for Human Life and Dignity, (4) Protection of the Vulnerable, (5) Non-Commercialization, (6) Appropriate Use of Resources, (7) Accountability, and (8) Balancing of Individual and Collective Interests. The Commissioners immediately point to the substantial overlap and inevitable conflict among these principles, though they do not consider it a deterrent. They note:

... conflict cannot be prevented entirely; no ethical stance could ensure that. It is therefore important to have not only an ethical perspective that fosters care and community but also guiding principles to cast light on issues when conflicts arise. Each principle sheds a different kind of light on the options available. Reaching moral decisions often involves considering more than

one of these principles, as usually more than one will be relevant to the situation. Moral reasoning requires consideration of whether and how each of the principles applies, all within the overall perspective of the ethic of care. This approach seeks to prevent adversarial situations whenever possible; yet the guiding principles are in place to act as a sort of bottom line of social justice when all else fails ... The theoretical development of the ethic of care is taking place in many different contexts, in secular mainstream ethics, in feminist theory, and in religious thinking. We have drawn on all these sources to enrich our understanding.²⁷¹

Two methodologically relevant characteristics emerge in the RCNRT Report. First, each of these eight principles is considered equally important. Royal Commissioners stress that the moral reasoning of ethic of care is directed not to finding supreme rules to arbitrate between conflicting guiding principles, but merely to removing and reducing conflict and to helping human relationships flourish by seeking to foster the dignity of the individual and the welfare of the community.²⁷² Second, the Commissioners do not feel obliged to keep each principle intact. In fact, they freely combine some of the guiding principles into broader ethical tenets or divide one up into finer categories, as need may arise.²⁷³

The application of the pragmatic approach to ethical problems on an ad hoc basis, such as the one inherent in the RCNRT Report, has met with considerable skepticism, both from critics outside of philosophy and from philosophers who

²⁷¹*Proceed with Care* (1993:50-51).

²⁷²*Proceed with Care* (1993:52).

²⁷³*Proceed with Care* (1993:53).

were never convinced that the turn to practical issues should have taken place.²⁷⁴

The most fundamental doubt regarding the value of philosophical treatments of practical issues, such as access to health care, concerns methodology. The conclusions that are reached at the end of these treatments are still rationalizations rather than rationales, as they rest on the personal tastes of their proponents rather than replicable outcomes.²⁷⁵ Conversely, the application of economic logic to such issues as access to healthcare is criticized as adopting too narrow and stringent a method of inquiry on such ethically charged issues as access to and provision of healthcare. The Commissioners' seem to have been swayed more from the criticism involving economic logic than the one directed toward applied ethics, clumping all economists under one rubric and ascribing the task of investigating the notion of sympathetic attention to the purview of ethics alone. The excerpt presented above demonstrates that the Royal Commissioners, while thoroughly appreciative of the most recent developments in the field of moral reasoning, are uninformed of the paradigmatic changes that have occurred in economic theorizing. Indeed, the Commissioners glaringly miss that the ethical premise "human beings are connected to one another in families, communities, and social bonds of all sorts"²⁷⁶ is concurrently an old political economic concept, consistently emerging in modern writings regardless of whether its proponent subscribes to a conservative and coercive or a liberal and democratic spectacle of

²⁷⁴Wikler (1982:111), citing Avern (1982), Beauchamps (1982), Singer (1982) and himself (1982a). For full citations of these works, see References.

²⁷⁵Wikler (1982:112).

²⁷⁶*Proceed with Care* (1993:50).

polity. Hans Ritschl, an eminent supporter of an autocratic and organic political constitution, makes a clear distinction between two different spheres of economic activity, private and public, allowing the coercive hand of the state to manifest itself only in the second decision environment:

The economic principle is a general principle of rational behavior—and not only in a rationalistic sense. The principle applies to all deliberate practical action in the fields of material things, art, politics, and intellectual activity, just as much as in the narrower field of economics, whence it stems ... In the [private economy], then, self-interest alone regulates the relations of the members; by contrast, the [public] economy is characterized by communal spirit within the community. Egotism is replaced by the spirit of sacrifice, loyalty, and communal spirit. In the [private economy], the individual is guided only by his personal advantage; here, he thinks, feels and acts as a member of the community. His own interests take second place ... The spiritual metamorphosis which makes an individual a particle of the whole, is not so much a matter of becoming conscious of being part and parcel of this whole, but an immediate nascence of the innermost spiritual forces of the individual who never ceases to live and to be within the community to which he belongs.²⁷⁷

Ritschl continues that the stark behavioral differences between the private-economic and public-economic agents does not invalidate the ultimate utilitarian principle in that social utility is the sum of the deeds and actions of all the members of the community. This requires the transformation of the economic principle to encompass all the motives of action, including selfishness, communal

²⁷⁷H. Ritschl, *Gemeinwirtschaft und kapitalistische Marktwirtschaft. Zur Erkenntnis der dualistischen Wirtschaftsordnung*, Tübingen (1931), a section of which is reprinted as “Communal Economy and Market Economy,” in Musgrave and Peacock (eds.), *Classics in the Theory of Public Finance*, London and New York: Macmillan (1958:237).

spirit, love, solidarity, ambition, and sympathy.²⁷⁸ What is more, there is little difference in the model of the public economy developed by this archetypal proponent of the historico-organic theory of state and one of the most liberal of welfare economists, Arthur Cecil Pigou. Pigou, the great reviser of the inherently selfish *homo oeconomicus* into a creature that is amenable to other people's welfare, remarks:

Every mind, it has been said, is inscrutable to every other mind. How is it possible for me or anyone else to decide whether my satisfaction is greater, equal to or less than your when we are faced with similar, and *a fortiori* with dissimilar situations? ... [Yet,] among people *prima facie* similar, growing up in the same general environment, it is reasonable to suppose that their reactions to various ... situations will be roughly similar. Of course, particular individuals will react differently, but representative men in different groups may be expected to react more or less alike. We cannot, of course, prove this to be so, but on the basis of personal experience, discussion, and analogy, it seems probable. At all events in practice we always act on that assumption. This is enough to allow our analysis to proceed. It is at all events the best that we can get.²⁷⁹

Political economic discourse has progressed enormously since Ritschl and Pigou made these remarks, appropriating a drift that has become more and more difficult to separate from its counterparts in political science, sociology, and ethics. Rawls, for example, in his defense of his so-called maximin criterion,²⁸⁰

²⁷⁸Ritschl ([1931]1958:237).

²⁷⁹Pigou ([1954]1961:838).

²⁸⁰Rawls' maximin criterion refers to the second part of his principle of equity whereby he allows inequalities only if they increase the utility of the least well off, that is,

starts his address at the American Economic Association Meeting in December 1973 as follows:

Recently, the maximin criterion of distributive equity has received some attention from economists in connection with the problem of optimal income taxation. Unhappily I am unable to examine the merits of the criterion from the standpoint of economic theory, although whether the criterion is a reasonable distributive standard depends importantly on the sort of examination that only economists can undertake.²⁸¹

Subsequently, Rawls, despite his disclaimer that he does not consider himself an economist, goes on to argue in precise price-theoretic terms that not only does the “maximin” criterion hold more water than the standard economic principle of maximal average utility, but also, coupled with the political-theoretic principle of priority of individual liberty, it yields superior explanation and prediction *vis-à-vis* the wholesale utilitarian principle of maximization of total utility. In light of the sprawling political economic vista provided by Rawls, should it matter if we ascribe him to economics, political science, political economy, ethics, none, or all? Demarcations among social and moral sciences have become more and more fuzzy, as legal scholars adopt economic methodology,²⁸² anthropologists and social biologists see in all creatures a

maximizing welfare at its *minimum* level. See Rawls' *A Theory of Justice*, Oxford: Oxford University Press (1972: Section 46).

²⁸¹J. Rawls, “Some reasons for the maximin criterion,” *American Economic Review* 64 (1974:141).

²⁸² For example, Ronald Coase argues that if markets are inefficient (say, the bees in my apiary fly over your orchard and suck off the nectar) a change in a liability rule (you and I

measure of rationality,²⁸³ and economic scholars foray into individual and group psychology,²⁸⁴ ethics,²⁸⁵ or politics.²⁸⁶ This is not a surprising development at all, considering that:

a clean line between the political, social, and economic is difficult to draw. Society is a seamless web in which the individual plays several roles: a factor of production (usually labor), a consumer, and a citizen. As a consumer, the person votes with dollars' as a citizen, the person votes in the political process. The better-off citizen is more likely to vote [in the market] than the poor. Moreover, the rich can buy political access.²⁸⁷

In light of the above discussion, the statement by Royal Commissioners that any social contract theory, including utilitarianism and its operational arm,

agree that I pay some monetary compensation) rather than an appeal to existing property laws will leave agents' production and consumption patterns both unchanged and economically efficient ("The problem of social cost," *Law and Economics* 1 (1960).

²⁸³Eric Alden Smith, "Anthropological applications of optimal foraging theory," *Current Anthropology*, vol. 24 (1983:625-651) and Edward O. Wilson, "The ergonomics of caste in the social insects," *American Economic Review*, vol. 68 (1978), respectively.

²⁸⁴Gary Becker, *The Economic Approach to Human Behavior*, Chicago: University of Chicago Press (1976), in which Becker argues that, first, human behavior is not compartmentalized into economic and non-economic conduct, and, second, individuals act to maximize their advantages even in choices such as marriage and crime that seem to fall in the second sphere. In Mancur Olson's "Logic," in *The Rise and Decline of Nations: Economic Growth, Stagflation, and Social Rigidities*, New Haven: Yale University Press (1982:17-35), the logic of collective action is characterized as the paradox of group inaction in that the larger the number of participants the larger the probability that nothing will be done (Let other people choose between Bush or Kerry).

²⁸⁵Hal R. Varian, "Distributive justice, welfare economics, and the theory of fairness," *Philosophy and Public Affairs*, vol. 4 (1974-75:223-247).

²⁸⁶Dennis C. Mueller, *Public Choice*, Cambridge: Cambridge University Press (1979).

²⁸⁷E. R. Canterbury, *The Literate Economist: A Brief History of Economics*, New York: HarperCollins College Publishers (1995:340).

economics, “are premised, in one way or another, on an understanding of human nature that sees people as individuals first and foremost, protecting their own interests against the encroachment of others,”²⁸⁸ seems an overblown averment. Both the vestiges of social contract and the trappings of utilitarian ethic are often observed in human society along with a high degree of social-mindedness and cooperation. In fact, Hirshleifer noted that “the social contract seems to maintain itself far better than we have any right to expect, given the agency and free-rider problems involved in enforcing the contract against overt and covert violations, [o]r putting the emphasis the other way, the workings of the social system appear to be lubricated by individuals who are willing to act voluntarily *pro bono publico*.”²⁸⁹ Clearly, the interaction of economics with contiguous sciences culminated in the resting of the concept of social contract on decidedly more normative grounds. Rawls, for example, theorizes in *A Theory of Justice* (1972) that the first condition of a fair social structure is one whereby individuals decide on the rules of the political constitution before knowing anything about their own income, social status, intelligence, health, and so on. Yet, as to how the government is to *implement* redistributive policy, this calls for clearly normative judgments. Should the fiscal policy adjust inheritance taxes or income taxes? If so, how progressive should the tax rates be so that they do not obliterate the human proclivity to leave something behind for the offspring? Rawls’ theory

²⁸⁸*Proceed with Care* (1993:50).

²⁸⁹Hirshleifer (1985:55). By agency is meant the delegation of individual autonomy to another party, usually a politician. As for free-riding, it refers to the receiving utility from a jointly consumed good without contributing to its financing, such as benefiting from union rights without paying the attendant dues.

cannot provide a social equilibrium unless *all* implementation problems were decided in the beginning, behind the veil of ignorance. As such, Rawls' scenario suggests that government policy will require some people to contribute to the income of other people, with the attendant result that the former will be forced to work for the welfare of the latter, which, in the view of some detractors of Rawls' theory,²⁹⁰ is a stone's throw away from slavery.

As economic discourse has become less axiomatic and more normative, and its operational apparatus has come to allow suboptimal results, the opportunity has arisen to apply the revised economic logic to ethics. Economics and a certain branch of ethics, utilitarianism, have always been in close association. In fact, economics has routinely been considered the operational arm of utilitarianism. Bentham's star pupil, J. S. Mill, established economic efficiency as the basis of social policy, unfortunately without explicating just how in the calculation of expected total benefit of a public policy measure the utility ascribable to *A* could be combined with that of *B* when the two individuals have two different preference orderings. As we have seen, this task was achieved by Henry Sidgwick.

The next step was taken by Francis Edgeworth, who proposed a progressive redistributive process to be established and to continue until social

²⁹⁰For example, Martin Ricketts, "Tax theory and tax policy," Chapter 2 in A. Peacock and F. Forte (eds.), *The Political Economy of Taxation*, New York: St. Martin's Press (1981).

utility is maximized, which would occur when the disutility of the last dollar taken from each person is equal to the utility of the last dollar the person would earn.²⁹¹ The argument took on an additional normative character when A. C. Pigou established in *Economics of Welfare* (1920) that, while individuals are capable of maximizing their respective utilities by equating the last dollar spent on a commodity with the utility they expect to derive from the last unit of purchase as expounded by Edgeworth, there were many instances in which social and legal intervention on individual autonomy would be indicated. First, the individual needs to be protected by negative measures, such as against fraud and misrepresentation which would inflict harm (as in the case of false advertising involving drugs and medicines) and, second, the individual should be encouraged by positive measures, such as the state's supplying school children with free lunch or selling some items below cost.²⁹² As such, political economic argument came full circle, with the Welfare State centrally figuring in the exchange process involving the consumer and the producer of private goods, very much in the ancient works of society, from Plato and Aristotle to St. Thomas, Campanella, and Grotius.

Not counting those who subscribe to utilitarian ethics, ethicists generally have not engaged in a dialogue with economics, evidently construing a categorical incongruity between the two spheres of scholarship. The present work stresses

²⁹¹F. Y. Edgeworth, "The pure theory of taxation," *Economic Journal*, vol. VII (1897), reprinted in R. A. Musgrave and A. T. Peacock (eds.), *Classics in the Theory of Public Finance*. New York: Macmillan (1958:119-136).

²⁹²Pigou ([1954]1961:839), expanding on his 1920 work.

that a firm interface actually exists between a branch of economics, political economy, and a branch of ethics, ethic of care. The common ground between these two particularist perspectives unfolds in the scrutiny of the 1993 report prepared by Royal Commissioners that espouses an elaborate operational framework based on an ethic of care and the key premises of developed by neoclassical and contemporary political economists. The first of the two principles of the ethic of care approach, Individual Autonomy, figures prominently in the RCNRT Report (1993). The second principle, Sympathy, is not specified in the report as such, although it is unmistakably interwoven with the principles of Respect for Human Life and Dignity, Protection of the Vulnerable, and Balancing Individual and Collective Interests in basically the same manner expounded by Manning (2001).²⁹³ In fact, because the principle of Sympathy constitutes an integral part of the Royal Commissioners' argument, I will impute the principle of Sympathy in their report, thus increasing the number of guiding principles elaborated therein from eight to nine in the process.

These two principles of an ethic of care, Individual Autonomy and Sympathy, though appearing under different rubrics, have resounding counterparts in political economy. The terms adopted in political economy for Individual Autonomy and Sympathy are Subjective Valuation and Collective

²⁹³Manning (2001), in turn, does not list individual autonomy as a distinct principle, although subsuming her concern for individual autonomy, along with equality, in the five principles enumerated in Chapter 2, Section C of this work.

Choice, respectively. Political economists extrapolated Subjective Valuation from Bentham's hedonism and reformulated it in marginalistic terms.

There is no stipulation in marginalist economic theory that individuals hold their private valuations above those of their community. This concept was merely implied, though not elaborated, in Jevons' 1871 work, *The Theory of Public Economy*. The model of socially-minded Economic Man was elucidated by a later political economist, Emil Sax, in his *Grundlegung der thoretischen Staatwirtschaft* (1883) and later in *Die Wertungstheorie der Steuer* (1924). Sax used the same methodological instrument, marginal analysis, which, in the hands of the successors of Stanley Jevons, Alfred Marshall, Vilfredo Pareto, and especially Francis Edgeworth, was turned into a tool to separate economic science from moral philosophy. Sax was disillusioned by this move. He envisioned society as an environment in which individuals were motivated not only by egoism, but also by sympathy, mutuality, and altruism. In Sax's view, these individuals, as the members of the same community, would not only share the same moral values, but also fathom the needs felt by their cohorts when it comes to primary social goods, such as healthcare. Accordingly, each member willingly contributes to the financing of these services, not shirking the responsibility of absorbing the commensurate cost. This process, according to Sax, entails not a private choice (according to which two individuals act in conformity with their respective valuations concerning the exchange of a private good), but a *collective* choice, in which the valuation is directed to determine the amount and the

concomitant payment (*i.e.*, tax) of the provision of the primary social good (*e.g.*, healthcare). In making this valuation, members balance two interrelated concerns: the utility the social good in question bestows on themselves versus their ability to pay for that good. At the end of this economic and moral deliberation, the individual member willingly sacrifices a lower-ranking private want in exchange for the higher-ranking social want, until the marginal yields of the two goods in question are equalized. Hence, a balance is achieved in the community that satisfies not only the conditions of efficiency, but also those of equitability.²⁹⁴

Emil Sax did not make a distinction among the moral sentiments of sympathy, altruism, mutuality, and beneficence. Some political economists who succeeded Sax did distinguish benevolence from other concepts of sociability. In their opinion, benevolence requires that the agent take a specific *action* that has beneficial effects on others, instead of merely feel sympathy for them but take no action. For these political economists, benevolence assumes the characteristic of a primary social good, which will be underprovided if left exclusively to the private sector of the economy.²⁹⁵

As was discussed by Hochman and Rogers, the reason to judge benevolence as an economic good is that it improves the conditions of the

²⁹⁴E. Sax, *Die Wertungstheorie der Steuer* [The Subjective Valuation Theory of Taxation], Vienna: Hölder (1924), reprinted in R. A. Musgrave and A. T. Peacock (eds.), *Classics in the Theory of Public Finance*, New York: Macmillan (1958:186-187).

²⁹⁵H. Hochman and J. D. Rogers, "Pareto Optimal Redistribution," *American Economic Review* 59 (1969:542-557).

disadvantaged, hence has a Pareto effect. What is missing in Hochman and Rogers, in turn, is that in order for benevolence to qualify as a good—collective or otherwise—it must comply with the dual conditions that (1) the givers must feel that they would be made better off by giving, or else exercise their will not to give, and (2) the receivers must agree not to accept the charity unless they perceive it will make them better off.²⁹⁶ Kenneth Boulding adds another requirement to the concept of benevolence, that of proximity. He reminds us that we feel benevolent only towards those with whom we have some degree of affinity; but towards those members of our community we have no relationship with, we are likely to feel indifferent.²⁹⁷ Yet even in this case, the standard political economic mechanism of Pareto improvement would remain in effect in that any self-interested person would welcome the betterment in the welfare of other members of society as long as their own utility is not diminished in the process. As such, a minimum degree of benevolence remains intrinsic in all our subjective valuations, which constitutes the social basis of any exchange relationship involving private as well as public goods. Boulding remarks:

We exchange courtesies, smiles ... and so on with the clerk in the store, as well as exchanging money for commodities. The amount of benevolence which exchangers feel towards each other need not be large, but a certain minimum is essential. If exchangers begin to feel malevolent toward each other exchange tends to break down,

²⁹⁶R. G. Holcombe, *Public Sector Economics*, Belmont, California: Wadsworth Publishing (1988:276).

²⁹⁷Boulding (1969:5).

or can only be legitimated under conditions of social ritual, such as silent trade or collective bargaining.²⁹⁸

What remains to be done is to apply the above arguments to the exchange process involving ARTs and to integrate them with guiding principles established by the proponents of ethic of care. The two sets of principles, each comprising an economic and a moral component—individual autonomy and sympathy on the one hand, and subjective valuation and benevolence on the other—fully merge at least in one important respect, namely, the balancing of individual and collective interests. It is refreshing to observe that Royal Commissioners, too, after finding the economic perspective categorically deficient for not paying sufficient attention to “other” people’s lives,²⁹⁹ still admit “there is no inherent conflict between individual and collective interests; [o]n the contrary, a community can flourish only when its individual members are flourishing, and individuals can flourish only within a larger social context.”³⁰⁰ This position is certainly in line with the political economic stance elaborated by Sax, Boulding, Hochman and Rogers, Holcombe, and Boulding above. Yet, the members of the Royal Commission on New Reproductive Technologies, either overlooking or consciously discounting this evidence, still cling to their initial premise that only a broad ethical perspective would help resolve the conflict between individual and collective interests by providing, not a wholesale decision rule, but some

²⁹⁸Boulding (1969:5-6).

²⁹⁹*Proceed with Care*, Volume 1, Chapter 3 (1993:51).

³⁰⁰*Proceed with Care*, Volume 1, Chapter 3 (1993:63).

guidelines that can be applied singly or jointly to given situations involving ARTs.

The third principle espoused by the Royal Commission, Equality, is also a prime concern of political economy. We have seen that political economists, right from the start, have envisioned two kinds of equality, horizontal and vertical, and explored the nature of their consequences in great detail. To reiterate, by the principle of horizontal equity political economists mean that people with equal economic capacity should contribute to public services equally, that is, they should experience the same burden. The vertical equity rule proceeds on the premise that people with different ability should contribute to public expenditures differently so that, again, each contributor experiences the same economic burden. In other words, two people who earn the same income should pay the same income tax; but, if one of them earns a higher income, that person should pay more. The direct extrapolation of the twin concepts of equality from public finance to public health may not work out successfully. One can always argue that two seekers of healthcare should be allowed to pay a different price depending on their respective economic stations in societal life; unfortunately, this decision rule is not practicable due to distinguishing characters of public goods, non-divisibility, non-rivalry, and non-excludability.³⁰¹ Private goods are not subject to this problem because their benefits are divisible, their consumption is rivalrous, and those demanders who are not willing to pay their price can be excluded from their consumption. In other words, you cannot eat the same morsel of the

³⁰¹Refer to Note 11 for an explanation of these key characteristics of social goods.

hamburger that I am eating (rivalry), you cannot get one for less than the going price (excludability), however I can sell you a piece of the hamburger that I am not eating for an appropriate price (divisibility). This mechanism is not possible in the public economy. To illustrate this point, consider two individuals, the first ascribing a high value to public health and the second a low one. In accordance with their respective subjective valuations, the first person would be willing to contribute more to the financing of this public good and the second less. Now consider that the two people have the same income and they are taxed equally in compliance with both precepts of equal taxation on the basis of the subjective valuation of the first taxpayer. This will result in an inequitable outcome, since the second person would be imposed a higher fiscal burden *vis-à-vis* his or her subjective valuation.

The basic problem in political economy therefore is how to measure respective social burdens and how to equalize the total burden among different individuals. Hence, the political economic discourse on how to create an equitable society hinges more on calculational concerns than on philosophical theorizing. The ethical perspective, on the contrary, glosses over the technical difficulties involved in this calculus and reiterates the philosophical concerns. Should one construe this divergence as a rift that cannot be filled or an estrangement that can be reconciled? Evidence shows that the second alternative is within the realm of possibility.

To the members of the Royal Commission, “the principle of equality means that every member of the community is entitled to equal concern and respect, [which] ... is particularly relevant in discussions of access to [public] services, because [they] must be not only accessible, but also designed to take into account the diversity of needs, expectations, abilities in the populations they are intended to serve.”³⁰² The definition thus manifests the concept of equality elaborated by political economists, both in the horizontal and the vertical sense of the term. The difference is that Royal Commissioners eschew the insight provided by political economists and delve exclusively in the philosophical sphere to generate answers to such questions as how ARTs affect different people differently, how to equalize these differences, and how to put hitherto discriminated segments of population on equal footing with other members of society. Actually, the ethical and political economic perspectives on equality are fully complementary, and are likely to afford a better insight if they are brought on the same platform.

The principle of Respect for Individual, in the way that it is presented by Royal Commissioners, partially covers the principle of Respect for Patient Autonomy. The Executive Summary of the research written by Françoise Baylis with regard to this principle begins:

Based on the principle of respect for persons, health care practitioners are morally obliged ... to give autonomous patients and research subjects adequate information so that they can make

³⁰²*Proceed with Care* (1993:54).

informed choices about participating in a medical intervention. In the context of assisted reproductive technologies (ARTs), ... the objective ... is “for infertile couples to retain control over their participation in therapy or research, and for them to make choices in accordance with their objective and values.”³⁰³

Baylis goes on by itemizing ten categories of information that

should minimally be made available to the patient or subject. This includes his or her current medical status; the nature and objectives of the proposed intervention, alternative interventions and adjunct interventions; the nature and probability of known and possible consequences; the qualification of team members; the costs involved; and any other information that may help him/her to make an informed choice. In addition, there should be statements that s/he may ask questions now and later; that s/he may refuse to participate without jeopardizing access to health care; and that consent and refusal are revocable.³⁰⁴

The reason that I excerpted the Executive Summary virtually in full is because it describes someone who claims to elucidate the principle of respect for persons, but instead explicates the principle of patient autonomy. Indeed, what the author communicates in the ensuing pages of her report revolves around the question of how to endow the patient with the necessary knowledge to allow him or her to make autonomous choices as the medical intervention begins, proceeds, and comes to an end. In the kind of research characterized by Baylis’s excerpt above, the principle of respect for individual is largely, if not fully, subsumed in

³⁰³F. Baylis, “Assisted reproductive technologies: Informed choice,” in RCNRT Report, *New Reproductive Technologies: Ethical Aspects*, Volume 1 of the Research Studies, Ottawa: Minister of Supply and Services Canada (1993:47).

³⁰⁴Baylis (1993:48).

the principle of patient autonomy. More important from the point of view of my work, the Executive Summary could as well have been written by a political economist! In fact, many political economists have commented on the topic of market transparency or the lack thereof, especially in the case where information is not symmetrically distributed between the user and the provider of a good or service.³⁰⁵ In fact, Baylis either omits or downplays three crucial elements of informed consent in her scrutiny of informed consent—intentionality of human actions, cognitive limitations on the part of the patient or research subject, and voluntariness—which are elements that no political economist imbued with the contributions of Tversky, Kahneman, and Thaler, and familiar with those of Simon, Newell, and Cyert, would omit from this discussion.³⁰⁶ What is more surprising, Baylis is fully conscious that these three elements do constitute the intrinsic dimensions of any morally valid choice when she states:

In this paper, intentionality is not discussed. It is simply held that ARTs should be available only to those with the capacity to make

³⁰⁵For a discussion of the nature and consequences of asymmetrical distribution of information between the demander and the supplier of a commodity, refer to the seminal articles of two Nobel laureates in economics, namely, Kenneth Arrow, “Uncertainty and the welfare economics of medical care,” *American Economic Review* **53** (1963:941-973), and George Akerlof, “The market for ‘Lemons’: Quality uncertainty and the market mechanism,” *Quarterly Journal of Economics* **3** (1970:488-500).

³⁰⁶For the first three authors, refer to Note 100. For Simon, Newell, and Cyert, see: H. A. Simon and A. Newell, “Human problem solving: The state of theory,” *American Psychologist*, **26** (1971); R. M. Cyert and J. C. March, *A Behavioral Theory of the Firm*, Englewood Cliffs, New Jersey: Prentice Hall (1963); A. Newell, J. C. Shaw, and H. A. Simon, “Empirical explorations with the theory machine: A case study in heuristics,” in E. A. Feigenbaum and J. Felman (eds.), *Computers and Thought*, New York: McGraw-Hill (1963); and H. A. Simon, *Administrative Behavior: A Study of Decision Making Process in Administrative Organization*, New York: The Free Press – Macmillan (1965), first edition by Macmillan (1947).

intentional choices about whether to authorize or to refuse a non-coital method of reproduction and/or associated intervention(s). Understanding, the second element of a morally valid choice, though not discussed *per se*, is the focus of this and subsequent papers, each of which critically addresses issues concerning appropriate disclosure.⁵ Voluntariness, the third element of a morally valid choice, is discussed [only] briefly...³⁰⁷

⁵ An important debate that is not explored in this and subsequent papers is whether those who are responsible for disclosure are also responsible for determining whether there is sufficient understanding on the part of the prospective candidates in order for them to make informed choices.

The issues Baylis chooses not to discuss are precisely the ones that need elaboration in any discussion dealing with informed consent/patient autonomy. If this discussion were made by a political economist, the dimension of “intentionality” would have translated into “preference forming;” “understanding” into “symmetric distribution of knowledge;” and “voluntariness” into “willingness and ability-to-pay,” three essential components of individual decision-making. Baylis’s axiomatic stance that the typical patient or research subject in an ART project fully possesses these qualities is indicative how a deductively-oriented discourse would go astray when it is founded on unproven premises. The theorems of political economy, too, are sometimes derived not from the observation of facts, but through deduction from some axioms, but the apodictic certainty it seems to thrust on human actions is limited by the validity of the basic premises the given political economic argument is founded upon.³⁰⁸

³⁰⁷ Baylis (1993:48).

³⁰⁸ Von Mises ([1960]1979:64).

The principles of Appropriate Use of Resources, Balancing of Individual and Collective Interests, Respect for Human Life, Protection of the Vulnerable and Accountability also come into plain view in political economic discourse. In fact, the first of these three principles constitutes the very foundation of economic science, normally referred to as “efficient” use of resources. Political economists have extended the conventional concept of efficiency in private markets to the analysis of the appropriateness of a public policy measure by comparing the benefits and costs that are attributable to that intervention. However, in the political-economic market benefits and costs are measured in social terms, that is, from the point of view of the community rather than the individual. The procedure entails the identification of the benefits and costs of a public policy measure—say, opening up a new hospital in your neighborhood—and then translation of these magnitudes into comparable units, usually dollars. If you and your cohorts find the benefits stemming from having the hospital in your neighborhood exceed its disutility (costs), the proposal is deemed to produce a more efficient resource allocation, and the hospital should be built. Conversely, the measure should not be undertaken if such problems associated with having a hospital in your neighborhood as increased noise, traffic, or the very cost toward which you and your neighbors will be required to contribute exceeds the benefits.

Now let us see how Royal Commissioners explicate the principle of Appropriate Use of Resources:

The principle of appropriate use of resources recognizes the existence of diverse needs and finite resources, which requires that resources be used *wisely* and effectively. Resources used to help some people in one way become unavailable to help other people in other ways. Decisions about the provision of programs, procedures, or technologies must therefore be made in accordance with clearly defined public policies ... Our recommendations concerning the importance of evidence-based medicine, the need for assessment and evaluation of uses of technology in medical practice, and the appropriate roles for prevention and acute care are premised in part on this fundamental principle of making the most *appropriate* use of available resources.³⁰⁹

A political economist could not have said it any better, except he or she would have omitted the first italicized word and would have substituted the term “effective” in place of the second italicized term.

As for the principle of Balancing Individual and Collective Interests, there should be no disagreement among political economists that “both individual and collective interests are worthy of protection, and that individual interests do not automatically take precedence over collective interests, or vice versa.”³¹⁰ Royal Commissioners go on:

The individual interests with which we are concerned include those of women or couples seeking assisted conception or prenatal diagnosis services, those of gamete donors, and those of children born as a result of a new reproductive technology. The collective interests include those of society as a whole, as well as those of

³⁰⁹*Proceed with Care* (1993:56-57). Emphases added.

³¹⁰*Proceed with Care* (1993:57).

identifiable groups within society, such as women, children, people with disabilities, and members of racial and ethnic minorities.³¹¹

All these ethical concerns are duly incorporated in political economic analysis, if not carried to a higher level. Armed with the operational framework provided by Emil Sax and the computational tools specific to benefit and cost analysis, the political economist would be poised to handle this problem, perhaps more aptly than the bioethicist.

What is the position of bioethicists and political economists with respect to the principle of Respect for Human Life? The bioethical premise giving rise to the principle of respect for human life is straightforward: all forms of human life should be treated with sensitivity and respect—including those of zygotes, embryos, and fetuses, which, are not protected by law, since the law does not treat them as persons.³¹² Political economy does not in any way negate this stance. If anything, it would remind us that seekers and providers of ARTs, acting within the expanded frameworks of patient autonomy and paternalism, as presented in the preceding chapter, are eminently qualified to make the appropriate choices in this respect. The seeker of ART, as a well-informed, autonomous, yet socially-sensitive decision-maker, is not likely to act callously or indifferently towards the interests of the embryo and society. Similarly the provider of ARTs, as a gynecologist acting under the Hippocratic oath and having undergone intense

³¹¹*Proceed with Care* (1993:57-58).

³¹²*Proceed with Care* (1993:55).

training directed to instill the sense of duty to protect the interest of the mother as well as the incipient child, would be eminently willing and able to enforce this moral condition. In addition, the physician is under the scrutiny of his or her professional code of ethics as well as myriad relevant organizational rules and procedures. The possibility naturally remains that a physician may eschew all these sanctions and act deleteriously from the perspective of his or patients, but this would, by definition, be a violation of the physician's fiduciary responsibility toward the patient as well as the embryo.

The above discussion evokes a closely related principle expounded by bioethicists, Protection of the Vulnerable. According to the contributors to the RCNRT Report, "vulnerability relates to power imbalances, and this principle requires that the welfare of those who are less capable of looking after themselves or who are open to exploitation for various reasons to be given special consideration."³¹³ The political economic discourse not only reflects the same concern, but also suggests a way out. Arthur Cecil Pigou, the most eminent figure in a subfield of political economy known as welfare economics, established the fundamental principle of welfare state half a century ago when he wrote: "the ordinary citizen, in spite of the fact that he has more interest in and knowledge of his own wants than any official, nevertheless needs protection against fraud and misrepresentation."³¹⁴ Actually Pigou went a step further, by establishing the rule

³¹³*Proceed with Care* (1993):55.

³¹⁴Pigou ([1954]1961:837).

that when there is an incongruity between a person's wants and needs that proves detrimental to that person's welfare, the public authority has the duty to step in and remedy the problems arising from it. He remarks: "No normal child wants to be educated, and some parents, looking for his uses as a wage-earner, may not want it either. At the other extreme, a man may want extremely cocaine, heroin and other such drugs that are bound to do him serious harm."³¹⁵ In these cases, it is the duty of the public authority to enforce the proper policy, that is, to make public education mandatory and to prohibit the sale of narcotics.

In this connection, the principle elaborated by Pigou with respect to protection of the vulnerable includes non-commercialization, a cognate ethical principle of accountability, which is also stressed in the RCNRT's enumeration. Pigou's principle compels those who hold power in a welfare state to use that power responsibly and circumspectly, and not to allow some parties to reap a profit by engaging in an exchange activity that will prove detrimental to another.

Let us see how Royal Commissioners have approached this pair of ethical principles. As for the principle of Accountability, the Commission states:

The principle of accountability means that those who hold power, whether in government, medicine, technology, or other fields, are responsible for the way they use that power. This entails the conviction that Canadian society has a right—and a responsibility—to regulate and monitor how reproductive technologies are used to ensure that our values, principles, and

³¹⁵Pigou ([1954]1961:839). Emphasis in the original.

priorities are being respected. In the past, these functions have been assumed through the self-regulation of the professions. But ... there is increasing satisfaction with self-regulation as the sole method of ensuring accountability, because it is seen as an approach in which people from outside the professions have little role in the development or enforcement of policies and codes of practice.³¹⁶

As was demonstrated above, the political economic discourse is fully in line with the above argument, as it is with the next one explicating the principle of Non-commercialization of reproductive technologies:

Commissioners believe it is fundamentally wrong for decisions about human reproduction to be determined by a profit motive—introducing a profit motive to the sphere of reproduction is contrary to basic values and disregards the importance of the role of reproduction and its significance in our lives as human beings. Commodifying human beings and their bodies for commercial gain is unacceptable because this instrumentalization is injurious to human dignity and ultimately dehumanizing. We therefore consider commercialization of reproductive material and reproductive services to be inappropriate.³¹⁷

Pigou could not have said it better. In his own explication of this principle, Pigou termed “crude” the political economic doctrine prevailing at the time that the public authority ought to leave all choices to individuals and refrain altogether from interference since public officials are unlikely to understand what individual people actually want for themselves.³¹⁸ He elaborated:

³¹⁶*Proceed with Care* (1993:57).

³¹⁷*Proceed with Care* (1993:55-56).

³¹⁸Pigou ([1954]1961:838).

[T]he claim that people know what they want better than officials is certainly not true when they are deceived as to what things offered to them for sale really are. A big firm buying materials will usually have its own testing department and can protect itself. But the ordinary private customer cannot ... More interesting from the standpoint of the economist is [another] consideration. When people decide to spend their money in certain ways it sometimes happens that their spending yields uncovenanted benefits or inflicts uncovenanted damage on other people whose gains or losses do not enter the calculations of the spenders. There are many examples of this, The social costs involved in the supply of alcoholic drinks includes the provision of police to control the effects of its excess, but these costs do not enter into the price that the purchasers of such drinks have to pay for them ... If they did, as, with strict social accounting, they ought to do, the price of those products would be higher, less of them would be demanded and less resources devoted to making them.³¹⁹

The purpose of this chapter was to bring together two seemingly opposing perspectives to the provision of ARTs, political economic and ethical, and to demonstrate that they can be reconciled in a workable operational framework. The analysis has shown that the resulting integrated paradigm stands a better chance of offering effective remedies than the outlook based on one perspective exclusively. The reconciliation between political economy and ethic of care may not be perfect, but still such a rapprochement offers a more effective analytical and operational framework in the analysis of ARTs versus that provided by any strictly ethical or price-theoretic orientation. Furthermore, from a purely epistemological point of view, the unified methodological approach delineated in this work better complies with the procedural requirements predicated by the

³¹⁹Pigou ([1954]1961:838-839).

analysis of ARTs than either a purely axiomatic/deductivist or empirical/inductivist research agenda. The middle methodological ground suggested by this work allows the investigator to meld top-down, normative considerations along with bottom-up, descriptive observations, hence to move toward conclusions that both explain the nature and predict the consequences of the exchange relationship between seekers and providers of ARTs.

What has been discussed in this work is by no means exhaustive and definitive. For one thing, it largely focuses on only one side of utilization of ARTs—that of their seekers. The supply side of the equation has not been developed in equal detail. Still, the ethic of care has provided sufficient insight into what seekers of ARTs would expect from the providers of these services. Attentiveness, responsibility, competence, and responsiveness constitute an apt list of behavioral attributes ascribable to care-givers in general and to providers of ARTs in particular. Further research will show whether these care-givers indeed act in conformity with this behavioral stricture. If so, then we can proceed to ascertain whether and how the two preference orderings, that of the care-seeker and care-provider culminate in a viable equilibrium.

CONCLUDING REMARKS

Models of choice that prescribe a top-down protocol to attain pre-established goals are inherently attractive from an epistemological point of view. Resting on the platform of universal rationality, these models, regardless of whether they originate from ethics or economics, simplify the analysis of the otherwise too complex decision environment by providing useful generalizations and consistent outcomes. There is a serious downside to these models, however. They gloss over the pragmatic, inventive aspect of the prescribed process of choice by denying both personal and social imperatives and the genuine randomness of individual and social acts. Inductive/empirical models, conversely, provide room for individual will and chance, but are not conducive to consistent generalizations. The model that has been developed in this work occupies the middle ground proposing an eclectic method of inquiry, one that is based on a conceptual foundation of rationality and individual autonomy, but simultaneously recognizes and highlights the constraints imposed on possible outcomes by some social norms, specifically provided by an ethic of care.

The model has a narrow scope, as it refers largely to the demand side of the exchange process involving a specific class of commodity, ARTs. It was not the aim of this work to develop either a universal theory of demand for healthcare or a full-fledged theory of exchange of ARTs. What was presented in this work was a partial equilibrium model intending to reveal the adaptive decisional

behavior the seekers of ARTs display in their process of choice to attain outcomes that are satisfactory from both an economic and an ethical perspective.

Nevertheless, sufficient information was drawn on an ethic of care to provide the basis of the supply side of these utility-enhancing social goods.

In one sense, the model of utilization of ARTs presented in this work aims to graft onto an ethic of care the operational framework offered by political economy. As such, the model has two distinct yet interrelated components, ethical and political economic. As for the first realm, the model shares the common conceptual platform with particularistic rather than general ethical theories, as it does not intend to provide any sweeping morally justifiable norms of decision behavior in the provision of and access to ARTs. On another plane, it belongs to the descriptive rather than the normative realm of ethics, as it only aims to establish “what factually or conceptually is the case, not what ethically ought to be the case.”³²⁰ The placing of the foregoing analysis within the framework of economic theory—albeit in terms of political economy rather than conventional economics—is equally challenging, since the moral component of economic choice has not been sufficiently elaborated in any subspecialty of economic scholarship. The present work recognizes this omission and intends to incorporate relevant ethical considerations into the larger framework of economic choice involving the demand of ARTs. In this connection, the work draws upon the valuable insights from Posner, Etzioni, Hochman, and Sen. In addition, the

³²⁰Beauchamp and Childress (1994:5).

foregoing analysis refers to the contribution of key developers of the general problem-solving approach, including Thaler, Kahneman, Tversky, and Simon. Finally, thoughts are accommodated in this model of some early political economists, such as those of Smith, Bentham, and J. S. Mill; public economists of the neoclassical age, such as Sax, Wagner, and Ritschl; and more recent price theorists dealing with welfare economics, such as Pigou, Robbins, and Boulding. The ultimate product is an incipient unified theory that reconciles not just a set of mid-level ethical and economic principles and precepts, but also some prime principles and axioms of each field. As such, the model stands the chance of being transformed into a full-fledged ethical theory of demand and supply of ARTs. That synthesis would require a detailed scrutiny of the decision-making process specific to the *providers* of ARTs, which component has to be melded with the demand side of the equation into a unified theory of exchange of assisted procreative technologies. Insights from an ethic of care would greatly facilitate this endeavor, providing the necessary moral framework ascribable to care-givers in this contextualized exchange process.

In this enriched context of caring, healthcare providers will be expected to demonstrate higher levels of competence, attentiveness, and responsiveness than what is established in applicable codes of ethics. These caregivers will be held against higher standards of moral conduct, requiring them to view their professional status not as a cloak in which they can make special demands on

care-receivers, but as the basis for providing their services to society in more cooperative terms.³²¹

The study has stressed the stark methodological difference that inserts a deep wedge between ethical and economic theorizing, yet allows their assimilation in a unified theory of demand and supply of ARTs. As for ethical theorizing, neither normative nor descriptive treatments of ethically charged problems are amenable to standard scientific scrutiny and verification. Arguments revolving around these problems are judged on the basis of their logic and consistency of their results rather than their relevance and applicability. This allows great leeway for ethical theorists, who mobilize a good dose of subjectivity. The opposite holds true for economic theorizing, whose practitioners know only too well that their conclusions will be judged not only aprioristically, but also from the point of view of whether they lend themselves to independent replication.

These methodological conventions and concerns become manifest in most ethical and economic discourses, as each of these discourses serves a different epistemological goal. The conclusions and recommendations of ethicists who take a descriptive approach may help clarify some ambiguities and misconceptions inherent in the provision of healthcare in general and ARTs in particular, but go only so far in lending support to appropriate public policy measures. The

³²¹J. C. Tronto, "Does managing professionals affect professional ethics? Competence, autonomy, and care," *Feminists Doing Ethics*, P. DesAutels and J. Waugh (eds.), New York: Rowman & Littlefield (2001:200).

members of the Royal Commission on New Reproductive Technologies in Canada (1993) and the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research in the U.S. (1993) register their apprehension of this eventuality when they call in their formulation of general health policies on the inputs of investigators trained in economics and statistics as well as ethics and philosophy. Implicit in the call of these policy-makers is the appreciation that the basic postulate of economic theorizing (the fact that individuals, given their goals, will choose those alternatives that will produce the largest net utility in the achievement of those goals, and that these consistent and predictable outcomes will also be beneficial from the point of view of the community) will be fully instrumental in delineating the nature and predicting the outcomes of appropriate policy measures involving one of the most consequential public good, healthcare.

My analysis has shown that, fortunately for those who may endeavor to reconcile ethics and economics into a unified theory within contextual parameters, there exists an obvious identity between ethical and economic theorizing, namely that both take place within a social framework. In either kind of theorizing, some imperatives are accepted, albeit without much scrutiny. Researchers stand to benefit from scrutinizing these imperatives and espousing them as normative standards against which to judge their conclusions. Seen from this perspective, one discerns no *prima facie* methodological difference between ethical and economic methodologies. Specifically, a researcher may develop an ethical

discussion by focusing on concrete issues or engage in a less aprioristic economic discourse. As such, the goodness of a model of human conduct, regardless of whether it emanated from ethics or from economics, can be judged from the point of view whether it is consistent, coherent, logical, relevant, and stringent. The model elaborated in this work conforms to all these requirements.

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