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## *Is it Adultery? The Use of Third-Party Gametes in Assisted Reproductive Technology*

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Every semester I teach a course entitled “The Christian Home.” I discuss a range of topics with my students, but one of the more controversial issues is that of assisted reproductive technology (ART) with the use of donor sperm and/or eggs. During the years of teaching on this subject, I have experienced interesting interactions with some of my students. In one instance, the question was raised of whether or not the use of third-party gametes in ART could be classified as adultery.<sup>1</sup> At that moment, one of my students (for our purposes, we will call him “Jack”) raised his hand. He proceeded to tell the story of how his wife (we will call her “Joan”) donated her eggs to his sister (whom we will call “Jill”).

Because “Jill” suffered from infertility related to the viability of her eggs, “Joan” and her husband decided they wanted to help her. After praying about the possibility of donating her eggs, “Jack” and “Joan” reached the conclusion that such an action would indeed be a great benefit to “Jill” and her husband (whose name will be “John”). “Joan’s” eggs were retrieved and fertilized with “John’s” sperm; the embryos were injected into “Jill’s” uterus where they developed into two healthy babies, a boy and a girl. “Jill” delivered these children without major difficulty. “Jack” then declared in class that he and “Joan” had a niece and a nephew as a result of their selfless act of donating “Joan’s” eggs to “Jill” and “John.”

At this point I offered a correction to his description of the situation. I told him, as gently as possible, that his wife “Joan” had two children with his brother “John.” “Jack” retorted, “No, we have a niece and a nephew.” I replied that basic biology and genetics would demonstrate that these two children were the biological offspring of “Joan,” his wife, and “John,” his brother.

As you can imagine, my description was not received well. The student left class at a subsequent break and did not return that day. I feared that he had gone to the registrar’s office to drop my class. Thankfully, “Jack” returned

<sup>1</sup>Third-party gametes are sperm and/or eggs procured from a source other than the husband or wife for the purposes of reproduction. Such gametes are also called donor sperm and donor eggs (or ovum).

the next class period and approached me at the end of class. He told me that he had reported what I had said to his wife, who did not take very kindly to my biology lesson. However, they continued to discuss the situation, and now he had returned to ask me a question. “Do Jill and I have parental obligations to those children?” His question was heartfelt and filled with emotion. I could tell he and his wife had taken a hard look at what they had done and realized that these two children were not a niece and nephew. They were the children of his wife and the half-siblings of their own children. I wish I could have provided a better answer that day, but I had little to say other than the fact that while his wife might have parental obligations to the children, she had most likely given up her legal right to exercise such rights by donating her eggs.<sup>2</sup>

While many people believe that the ever-expanding use of ART and third-party gametes is a blessing,<sup>3</sup> it is important to stop and consider if such donations violate the sanctity of marriage. The author of Hebrews admonishes his readers that “Marriage is to be held in honor among all, and the marriage bed is to be undefiled; for fornicators and adulterers God will judge” (Heb 13:4).<sup>4</sup> Procreation has historically been included as one of the purposes of marriage, and the expectation was that offspring would come from the one-flesh union of the husband and wife. However, ART with third-party gametes opens the door to the introduction of others into the procreative process. Thus, procreation is not necessarily the result of a union between husband and wife, but the product of spouses, donors, and even surrogates. Many Christians express concern over the use of third-party gametes, but they are reluctant to call it adultery.<sup>5</sup> Why is that? Does the use of such gametes violate the one-flesh aspect of the procreative process? If so, should it be labeled as adultery?

This paper seeks to move the conversation about the use of third-party gametes by married couples in the procreative process toward the conclusion

<sup>2</sup>This interaction is based upon experiences from my classes. The details of this particular scenario have been merged from multiple encounters in order to preserve the anonymity of each individual circumstance.

<sup>3</sup>Generally speaking, the blessing of ART with third-party gametes comes from the idea that it serves as an answer to some types of infertility. Of course, we need to make clear that procreation is not an absolute requirement for marriage. Infertility in many instances is a tragic circumstance that couples experience through no fault of their own.

<sup>4</sup>Unless otherwise noted, all Scripture references are from the New American Standard Bible.

<sup>5</sup>While talking about artificial insemination (also called intrauterine insemination) with donor sperm, Dennis Hollinger notes, “With artificial insemination by a donor, however, there are significant ethical issues from a Christian perspective on sex, family, and parenting. Certainly AID should not be labeled adultery, for there is no physical union between the sperm donor and the wife of the couple desiring a child. There is, nonetheless, an intrusion of a third party into the marital unity, which has been consummated and set apart by the one-flesh union through sexual intercourse.” Dennis P. Hollinger, *The Meaning of Sex: Christian Ethics and the Moral Life* (Grand Rapids: Baker, 2009), 204. While Hollinger stops short of labeling the use of donor sperm as adultery, he does note that the unity of marriage is disrupted by the introduction of the sperm donor.

that it is equivalent to adultery. While procreation in this way may not meet the technical definition of adultery, the use of these gametes violates the biblical expectations for procreation within the context of marriage and simply adds a scientific step to an action that could only be accomplished before through illicit sexual contact.

### **The Ever-Expanding World of Assisted Reproductive Technology**

In order to demonstrate this thesis, we first need to survey the ever-expanding world of assisted reproductive technology. For many Christians, this is a realm of technology with which we are vaguely familiar but have not grasped the rate at which it is growing. ART involves a number of technologies including in-vitro fertilization, gamete intrafallopian transfer, zygote intrafallopian transfer, and surrogacy. However the specific definition of ART provided by the Centers for Disease Control and Prevention (CDC) excludes other technologies, such as intrauterine insemination. The CDC defines ART by stating:

ART includes all fertility treatments in which both eggs and sperm are handled. In general, ART procedures involve surgically removing eggs from a woman's ovaries, combining them with sperm in the laboratory, and returning them to the woman's body or donating them to another woman. They do NOT include treatments in which only sperm are handled (i.e., intrauterine—or artificial—insemination) or procedures in which a woman takes medicine only to stimulate egg production without the intention of having eggs retrieved.<sup>6</sup>

Added to this process is the possibility of gamete donation that brings a third (and potentially fourth) party into the procreative process. For the purpose of this paper, we will not explore the various technologies themselves but only speak of third-party gamete donation as part of these technologies.

The CDC reports that the use of donor eggs in ART increased nearly 32% between 2004 and 2013. In 2013, there were 19,988 ART cycles using donor eggs or embryos. This represents approximately 11% of all ART cycles performed in the United States. These ART cycles are especially prevalent among women over the age of 40, including approximately 73% of ART cycles among women over age 44.<sup>7</sup> Numbers of ART cycles involving donor eggs are much more difficult to ascertain prior to 2003. The CDC does not

<sup>6</sup>Centers for Disease Control and Prevention, "What is Assisted Reproductive Technology?" accessed 3 October, 2016, <http://www.cdc.gov/art/whatis.html>.

<sup>7</sup>Centers for Disease Control and Prevention, American Society for Reproductive Medicine, Society for Assisted Reproductive Technology, *2013 Assisted Reproductive Technology National Summary Report* (Atlanta: US Department of Health and Human Services, 2015), accessed 3 October, 2016, [http://www.cdc.gov/art/pdf/2013-report/art\\_2013\\_national\\_summary\\_report.pdf](http://www.cdc.gov/art/pdf/2013-report/art_2013_national_summary_report.pdf).

report the number of cycles that use donor sperm. In addition, since intra-uterine insemination (IUI) is excluded from the ART statistics, we do not know how many cycles of IUI involved donor sperm. It is safe to say that the numbers are much higher than ART cycles using donor eggs simply because the retrieval method for donor sperm is much easier. As early as 1987, there were estimates that 30,000 children per year were born through IUI with donor sperm.<sup>8</sup> No current numbers exist, and one can only speculate that such estimates would be higher today.

In popular culture, the use of anonymous sperm donors has been sensationalized in films such as the 2013 release “Delivery Man,” starring Vince Vaughn. The movie depicts a man who had fathered more than 500 children through anonymous sperm donation. Once he finds out that many of his children are suing to learn his identity, he sets out to find some of them and get involved in their lives.<sup>9</sup> Lest one think that such stories are simply the product of Hollywood sensationalism, media reports about online registries such as [www.donorsiblingregistry.com](http://www.donorsiblingregistry.com) have documented multiple groups of more than 100 half-siblings fathered by the same sperm donor.<sup>10</sup>

Such reports demonstrate that the use of third-party gametes for ART is growing at exponential rates. However, many Christians, and especially evangelicals, are not thinking about the consequences of third-party gamete donation. There are a host of issues that rise to the surface when one considers the ethical implications: the rights of children to know their biological parents, knowledge of medical history, and potential incestuous sex with an unknown biological relative. But at the root of the issue are the theological ramifications of third-party gamete donations in relation to the purpose and design of marriage and procreation. Such theological reflection will lead to the question of whether gamete donation is equivalent to adultery.

### Purposes of Marriage

The purposes of marriage are significant for answering the question of the thesis. In order to ascertain whether third-party gamete donation is adultery, we must understand the theological purposes of marriage and their subsequent connection to procreation. There are a number of different places we can go to generate a list of the purposes of marriage (and sexual inter-

<sup>8</sup>C. Ben Mitchell and D. Joy Riley, *Christian Bioethics: A Guide for Pastors, Health Care Professionals, and Families* (Nashville: B&H Academic, 2014), 119.

<sup>9</sup>“Delivery Man (2013),” The Internet Movie Database, accessed 3 October, 2016, <http://www.imdb.com/title/tt2387559/>.

<sup>10</sup>For example, see Jacqueline Mroz, “One Sperm Donor, 150 Offspring,” *The New York Times*, 5 September 2011, accessed 3 October, 2016, [http://www.nytimes.com/2011/09/06/health/06donor.html?\\_r=0](http://www.nytimes.com/2011/09/06/health/06donor.html?_r=0); Susan Donaldson James, “Confessions of a Sperm Donor: Hundreds of Kids,” ABC News, 19 August 2010, accessed 3 October, 2016, <http://abcnews.go.com/Health/sperm-donors-admit-fathering-hundreds-children-call-regulation/story?id=11431918>; and “Genetic Lessons From a Prolific Sperm Donor,” *Newsweek*, 15 December, 2009, accessed 3 October, 2016, <http://www.newsweek.com/genetic-lessons-prolific-sperm-donor-75467>.

course within marriage), but for the purposes of this paper we will follow the work of Augustine in “On the Good of Marriage”<sup>11</sup> and *The Literal Meaning of Genesis*.<sup>12</sup> In these works, he provides three basic goods of marriage that serve as our purposes—fidelity, procreation, and unity. In *The Literal Meaning of Genesis*, Augustine succinctly notes, “Now this good is threefold: fidelity, offspring, and sacrament. *Fidelity* means that there must be no relations with any other person outside the marriage bond. *Offspring* means that children are to be lovingly received, brought up with tender care, and given a religious education. *Sacrament* means that the marriage bond is not to be broken.”<sup>13</sup>

The reason for starting with Augustine’s purposes of marriage is that he articulates a succinct summary of the biblical witness on the purposes of marriage. Rather than needing to build a case from the beginning regarding the biblical witness on marriage in this paper, Augustine provides us with a historical treatment of these purposes that has clear connection to the text of Scripture. Augustine’s purposes can clearly be seen in some of the classic passages regarding the institution of marriage. Fidelity is implied in the one-flesh language of Genesis 2:24, and infidelity is prohibited in the seventh commandment (Exod 20:14). Procreation, or offspring, as a purpose of marriage first appears in God’s command to the man and woman to be fruitful and multiply in Genesis 1:28. This command is repeated to Noah and his family in Genesis 9:7 after the flood. Unity, which Augustine identifies as the sacramental bond of marriage, also appears in Genesis 2:24 with the language of two becoming one flesh. This same language reappears in Matthew 19:5, Mark 10:7, and Ephesians 5:32 where Jesus and Paul offer extended commentary on marriage. Thus, moving directly to Augustine’s purposes of marriage is not to bypass Scripture. Instead, we can stand on Augustine’s shoulders where he has already derived these purposes from the text of Scripture. In the following pages, we will deal with each purpose individually.

## Fidelity

There is little doubt that faithfulness in marriage is clearly communicated in the text of Scripture. The first place one might go is the seventh commandment. In Exodus 20:14 we read, “You shall not commit adultery.” This serves as the starting point for most conversations about fidelity in marriage. The theme of faithfulness—and avoidance of sexual sin—extends throughout the Old and New Testaments. In the Levitical Holiness Code, we find a similar prohibition against sexual intercourse with the wife of one’s neighbor (Lev 18:20). Such intercourse would result in

<sup>11</sup>Augustine, “On the Good of Marriage,” in *St. Augustin: On the Holy Trinity, Doctrinal Treatises, Moral Treatises*, vol. 3, edited by Philip Schaff, translated by C.L. Cornish, A Select Library of the Nicene and Post-Nicene Fathers of the Christian Church, 1st Series (Buffalo, NY: Christian Literature Company, 1887).

<sup>12</sup>Augustine, *The Literal Meaning of Genesis*, vol. 2, translated by John Hammond Taylor, vol. 42, Ancient Christian Writers: The Works of the Fathers in Translation (New York: Newman, 1982).

<sup>13</sup>*Ibid.*, 78.

defilement and required the civil punishment of death (Lev 20:10). The prohibition against adultery extends into the spiritual realm as well because it was used as an analogy for idolatry.

The New Testament continues this strong prohibition against adultery, and, by extension, promotes fidelity. Paul includes adultery in his vice list of 1 Corinthians 6:9–11. The author of Hebrews promotes the honor and purity of the marriage bed and condemns adultery and fornication (Hebrews 13:4). Jesus even extends the seventh commandment's reach beyond literal sexual intercourse with someone who is not a spouse and condemns lustful thoughts and gazes with the term adultery (Matt 5:27–28). Thus, Scripture clearly prescribes an expectation of fidelity in marriage.

Augustine references faithfulness as a prominent good of marriage. He writes, "There is this further, that in that very debt which married persons pay one to another, even if they demand it with somewhat too great intemperance and incontinence, yet they owe faith alike one to another. . . . But the violation of this faith is called adultery, when either by instigation of one's own lust, or by consent of lust of another, there is sexual intercourse on either side with another against the marriage compact."<sup>14</sup> In the 1930 papal encyclical, *Casti Connubii*, Pope Pius XI confirms Augustine's intent of conjugal faith as a reference to fidelity in marriage.<sup>15</sup>

Even in contemporary discussions of the purposes of marriage and sexual intercourse we find a commitment to fidelity as a purpose. John and Paul Feinberg write, "A final purpose of marriage and sex within marriage is the matter of curbing fornication and adultery."<sup>16</sup> They further explain that a faithful and regular sexual relationship within the context of marriage "is an aid in quelling the temptation to commit adultery."<sup>17</sup> Thus, marriage and the sexual relationship within marriage serve the function of maintaining fidelity for the spouses. This purpose of marriage is both biblical and historical in nature and will serve as a point of discussion related to ART with third-party gametes.

### **Procreation**

The second purpose of marriage is procreation. Biblically, this purpose appears earliest in Scripture making procreation a primary purpose of marriage. Genesis 1:27–28 reads, "God created man in His own image, in the image of God He created him; male and female He created them. God blessed them; and God said to them, 'Be fruitful and multiply, and fill the earth, and subdue it; and rule over the fish of the sea and over the birds of the sky and over every living thing that moves on the earth.'" At the outset

<sup>14</sup>Augustine, "On the Good of Marriage," 400.

<sup>15</sup>Pius XI, *Casti Connubii*, 10, accessed 3 October, 2016, [http://w2.vatican.va/content/pius-xi/en/encyclicals/documents/hf\\_p-xi\\_enc\\_31121930\\_casti-connubii.html](http://w2.vatican.va/content/pius-xi/en/encyclicals/documents/hf_p-xi_enc_31121930_casti-connubii.html).

<sup>16</sup>John S. Feinberg and Paul D. Feinberg, *Ethics for a Brave New World*, 2nd ed. (Wheaton: Crossway, 2010), 302.

<sup>17</sup>*Ibid.*, 296.

of creation God's expectation for the newly created husband and wife is that they would have children and fill the earth. Adam and Eve fulfill the command to multiply in Genesis 1:28 as they have Cain, Abel, and Seth. A similar command is repeated to Noah and his family in Genesis 9:1 after the flood destroyed the rest of mankind.

Procreation is a common theme especially in the Old Testament as one generation of Israelites passes its faith and land to the next generation. Some of the clearest examples of a focus on offspring revolve around God's covenants with Abraham and Israel. In Genesis 12:2 God promises to make Abraham a great nation; however, years later he still has no child. Abraham and Sarah then take matters into their own hands, and he fathers a child with Sarah's handmaiden Hagar. Ultimately, God opens Sarah's womb so that she conceives. We find that much of the narrative of Scripture about Abraham relates to offspring.

When the people of Israel finally reach the land of Canaan following the exodus, we read about the division of the land according to tribes and families in Joshua 13–22. The land served as an inheritance to be passed from one generation to the next as tangible evidence of God's promises to Israel. Even laws regarding the sale of land and the year of Jubilee were reminders of the importance of offspring as any land that had been sold was to be returned to the family who had inherited it (Lev 25:8–34).<sup>18</sup>

Augustine offers his own perspective on the purpose of procreation in marriage as he writes:

Truly we must consider, that God gives us some goods, which are to be sought for their own sake, such as wisdom, health, friendship: but others, which are necessary for the sake of somewhat, such as learning, meat, drink, sleep, marriage, sexual intercourse. For of these certain are necessary for the sake of wisdom, as learning: certain for the sake of health, as meat and drink and sleep: certain for the sake of friendship, as marriage or sexual intercourse: for hence subsists the propagation of the human kind, wherein friendly fellowship is a great good.<sup>19</sup>

He goes on to make the point (as does Paul in 1 Corinthians 7:7–8) that it is better not to marry. Augustine claims that there is not a great need to continue populating the earth, but people may still marry without sin (1 Cor 7:9, 28). The good of procreation in marriage, according to Augustine, is a necessary good for the sake of begetting.

There is general agreement among contemporary scholars that one of the purposes of marriage is procreation as well. Feinberg and Feinberg

<sup>18</sup>For an interesting discussion on the role of marriage and offspring in ancient Israel, see Barry Danylak, *Redeeming Singleness* (Wheaton: Crossway, 2010), 55–82.

<sup>19</sup>Augustine, "On the Good of Marriage," 403.



consider this to be the purpose of “rais[ing] up a godly seed.”<sup>20</sup> Dennis Hollinger notes, “God’s design is that humans enter the world through the most intimate, loving relationship on earth—the one-flesh covenant relationship of marriage. . . . God’s intention from creation is that children be born out of a sexual union that is covenantal, permanent, loving, enjoyable, and responsible.”<sup>21</sup> When combined with the sexual relationship, marriage is certainly directed towards the purpose of procreation. Even though some marriages are infertile, that does not undermine the procreative purpose of marriage.<sup>22</sup> It only points to the effect of the fall on the procreative process.

The connection between this purpose of marriage and ART is obvious. ART is a mechanism by which procreation is accomplished. The biggest question related to our thesis is whether the procreative purpose of marriage is violated when procreation involves a person outside the bond of marriage. This connection will be addressed in a subsequent section of the paper.

### Unity

The final purpose of marriage to discuss is unity. This purpose should come as no surprise to most due to the intimate nature of marriage. Bringing a man and a woman into a close, intimate bond that leads to separation from parents and the formation of a new family unit is the essence of unity. Scripture introduces this purpose at the moment that God instituted the first marriage. Genesis 2:24 reads, “For this reason a man shall leave his father and his mother, and be joined to his wife; and they shall become one flesh.” The one-flesh union represents the epitome of unity as the two individuals form the most intimate union imaginable. The language of Genesis 2:24 points us to the unique nature of marriage and serves as a metaphor for how God relates to his people. Both Jesus and Paul quote this text in their teaching on marriage. Jesus uses this passage to demonstrate God’s design for the indissoluble nature of marriage in Matthew 19:5–6 (cf. Mark 10:6–9). Paul references it in Ephesians 5:31–32 to describe how a husband and wife relate to one another as well as the mystery of Christ’s relationship to the church.

Augustine invokes the theologically-loaded term “sacrament” to describe this purpose of marriage. However, we should be cautious not to read into his wording a full sacramental theology. In fact, Augustine clearly states

<sup>20</sup>Feinberg and Feinberg, *Ethics for a Brave New World*, 302.

<sup>21</sup>Hollinger, *Meaning of Sex*, 102.

<sup>22</sup>J. Budziszewski offers a helpful clarification between potentiality and possibility when it comes to procreation. Potentiality involves the ontological purpose of the physical nature whereas possibility involves the capacity of an individual to exercise that purpose. In the case of procreation, potentiality and possibility refer to fertility. The potentiality of procreation involves the idea that marriage points toward procreation due to the natural function of sexual intercourse in the institution of marriage. Possibility refers to whether or not that potentiality becomes an actuality. Physical possibility would be limited by various causes of infertility while not undermining potentiality since it is the institution of marriage as a whole that leads to procreation. See J. Budziszewski, *On the Meaning of Sex* (Wilmington: ISI Books, 2012), 54–55.

what he means by sacrament when he writes, “*Sacrament* means that the marriage bond is not to be broken, and that if one partner in a marriage should be abandoned by the other, neither may enter a new marriage even for the sake of having children. This is what may be called the rule of marriage: by it the fertility of nature is made honorable and the disorder of concupiscence is regulated.”<sup>23</sup> The bond of unity is so strong that it serves as the overarching purpose of marriage even when one or both of the other two purposes are not upheld. Despite infidelity or infertility, unity remains and must not be violated.

Contemporary authors uphold a similar purpose of unity in marriage, but they do not have the force that Augustine attributed to it.<sup>24</sup> Many in evangelical circles would make an allowance for the dissolution of marriage and subsequent remarriage on the basis of abandonment or infidelity. Augustine, however, makes no such allowance; instead, he argues that neither infertility nor infidelity can break it. While most people would think of this purpose only being violated in the context of divorce, unity is perhaps the purpose most threatened by third-party gamete donation in ART.

### **Third-Party Gamete Donation and the Purposes of Marriage**

Now that we have considered three biblical and teleological purposes of marriage—fidelity, procreation, and unity—we must now explore how the use of third-party gametes in ART interacts with these purposes. This discussion will set the stage for determining if this practice is indeed adultery. If these purposes are violated through the use of ART with donors, then we will be moving in the direction of adultery.

#### **Gamete Donation and Fidelity**

The first purpose of marriage discussed was fidelity. This purpose seems to raise the most potential conflict with third-party gametes. However, that conflict depends on how one identifies the infidelity that violates this purpose. The Augustinian explanation of fidelity directly identifies the violation of this purpose as illicit sexual intercourse. Augustine writes, “*Fidelity* means that there must be no relations with any other person outside the marriage bond.”<sup>25</sup> The most direct implication from such a definition is that an adulterous sexual relationship is what is prohibited. He more explicitly identifies an illicit sexual relationship as the violation of fidelity in “On the Good of Marriage.” Augustine states, “But the violation of this faith is called adultery,

<sup>23</sup>Augustine, *The Literal Meaning of Genesis*, 78.

<sup>24</sup>Hollinger uses the terminology of “consummation of marriage;” Feinberg and Feinberg divide this purpose into “unity” and “companionship;” and J. Budziszewski calls it “union.” Budziszewski further states, “The other is union—the mutual and total self-giving and accepting of two polar, complementary selves in their entirety, soul and body.” See Hollinger, *Meaning of Sex*, 95–101; Feinberg and Feinberg, *Ethics for a Brave New World*, 301; and Budziszewski, *On the Meaning of Sex*, 24.

<sup>25</sup>Augustine, *The Literal Meaning of Genesis*, 78.

when either by instigation of one's own lust, or by consent of lust of another, there is sexual intercourse on either side with another against the marriage compact."<sup>26</sup> Even without Augustine's definitions, most people would likely agree that an adulterous affair is the clearest example of infidelity.

Interpreting infidelity as physical, sexual adultery raises a couple of problems. First, we have to deal with the technical definitions of adultery in Hebrew and Greek. In both languages, the term translated adultery requires that the woman in the illicit relationship be married. נָאֵפַת (*nā'ap*) is the Hebrew term for adultery found in the seventh commandment. According to Leonard Coppes, "This root represents 'sexual intercourse with the wife or betrothed of another man.'"<sup>27</sup> We see something very similar in Greek. The term μοιχεία is the technical form for adultery, and it has the same emphasis as found in Hebrew. Louw and Nida state:

From the standpoint of the NT, adultery was normally defined in terms of the married status of the woman involved in any such act. In other words, sexual intercourse of a married man with an unmarried woman would usually be regarded as πορνεία "fornication," but sexual intercourse of either an unmarried or a married man with someone else's wife was regarded as adultery, both on the part of the man as well as the woman.<sup>28</sup>

Thus, from the perspective of the various biblical languages, the sin of adultery could only occur if a married woman was involved in the act. Of course this problem is addressed fairly easily by the prohibition against fornication that we also find in the text of Scripture. In fact, it is often paired with adultery, especially in the New Testament.<sup>29</sup> In addition, Augustine's definition interprets adultery more broadly as sexual intercourse of either spouse with someone outside the marriage.<sup>30</sup> This is in keeping with how adultery is generally viewed in contemporary culture.

The more difficult question to address is the absence of sexual intercourse from the ART process. The reason that most couples undergo ART is because the natural procreative process through sexual intercourse is not working. Therefore, procreation is removed from the context of the marriage bed and placed within a lab setting. Sperm and egg are brought together

<sup>26</sup>Augustine, "On the Good of Marriage," 400.

<sup>27</sup>Leonard J. Coppes, "1273 נָאֵפַת," edited by R. Laird Harris, Gleason L. Archer Jr., and Bruce K. Waltke, *Theological Wordbook of the Old Testament* (Chicago: Moody, 1999), 542.

<sup>28</sup>Johannes P. Louw and Eugene A. Nida, "88.276 μοιχεύω; μοιχάομαι; μοιχεία, ας," *Greek-English Lexicon of the New Testament Based on Semantic Domains*, vol. 1 (New York: United Bible Societies, 1989), 771.

<sup>29</sup>See Matt 15:19; Mark 7:21; 1 Cor 6:9; and Heb 13:4.

<sup>30</sup>Augustine states, "But the violation of this faith is called adultery, when either by instigation of one's own lust, or by consent of lust of another, there is sexual intercourse on either side with another against the marriage compact." Note his statement about "sexual intercourse on either side." This implies either the husband or the wife. Augustine, "On the Good of Marriage," 400.

through medical technology, and once fertilization has occurred, the embryo is injected into the uterus of the woman. Thus, the biggest hurdle to overcome in labeling third-party gamete donation as adultery is the fact that no sexual intercourse takes place.

There are two ways to answer this question—biologically and theologically. From a biological perspective, it is true that no sexual intercourse takes place in the fertilization of the egg. The process is completely outside the body, and the donors of the gametes are not even present for the process. However, an argument could be made that the fertilization process is still sexual in nature. The biological function of joining sperm and egg is considered to be a sexual process. A very basic encyclopedic definition of reproduction states, “The joining of haploid gametes to produce a diploid zygote is a common feature in the sexual reproduction of all organisms except bacteria.”<sup>31</sup> Thus, the biological process of fertilization is sexual even though the ART process does not involve intercourse. The biological answer keeps the door open for identifying third-party gamete donation as adultery through the sexual process of fertilization. In addition to this biological answer to the question, we need to consider a theological answer.

The theological answer to this question involves Jesus’ treatment of the seventh commandment in the Sermon on the Mount. In Matthew 5:27–28 Jesus says, “You have heard that it was said, ‘You shall not commit adultery’; but I say to you that everyone who looks at a woman with lust for her has already committed adultery with her in his heart.” In this brief explanation of the seventh commandment, Jesus extends the force of the commandment beyond a requirement of illicit sexual intercourse. Admittedly, Jesus makes the application to one’s heart and specifically to lustful desires. However, in doing so, he applies the technical term for adultery to an act that does not include sexual intercourse. Therefore, it is not completely beyond the realm of possibility that a sexual function that takes place outside the context of marriage could receive the label of adultery.

In the Old Testament, the technical term for adultery, נָאָפַת (nā’ap), is also applied to the spiritual infidelity of the nation of Israel when they worship other gods. In addition, another Hebrew term זָנָה (zānā) meaning harlotry or fornication is used to describe Israel’s practice of worshiping false gods. As it relates to the description of Israel, the two terms are similar in their usage. Leon J. Wood notes, “A similarity between the two roots is found in the fact that both are used in a figurative as well as a literal sense; and also that, in the figurative, they are employed for the same basic concepts.”<sup>32</sup> The words appear with great frequency in the prophetic literature to describe spiritual unfaithfulness (e.g., Jer 3:2, 6, 8, 9; 5:7; 13:27; Ezek 16:32–36; Hos 4:11–12). Mark Rooker writes, “Because the violation of the marriage bond

<sup>31</sup>“Zygote,” *Encyclopædia Britannica*, accessed 6 October, 2016, <https://www.britannica.com/science/zygote>.

<sup>32</sup>Leon J. Wood, “563 זָנָה,” edited by R. Laird Harris, Gleason L. Archer Jr., and Bruce K. Waltke, *Theological Wordbook of the Old Testament* (Chicago: Moody, 1999), 246.

was a form of covenant breaking, adultery was employed to describe covenant unfaithfulness on the divine-human plane.”<sup>33</sup> The Old Testament usage of the adultery to describe spiritual unfaithfulness gives further credence to the theological idea that adultery need not include sexual intercourse. In the case of worshiping false gods, infidelity to the absolute loyalty demanded by the covenant relationship with God was enough to earn Israel the title of adulterer.

### **Gamete Donation and Procreation**

The most obvious interaction between a purpose of marriage and ART is found with procreation. The entire ART industry is built around the idea of facilitating procreation for people who cannot procreate naturally or choose not to do so for any number of reasons. This may be the clearest connection to adultery that we find among the purposes of marriage.

In Augustine’s treatment of procreation as a primary purpose in marriage, we must note that it is within marriage where this function is to take place. He states, “This is what may be called the rule of marriage: by it the fertility of nature is made more honorable and the disorder of concupiscence is regulated.”<sup>34</sup> It is true that procreation can take place outside the bond of marriage. This happens all the time in the United States today. In 2014, over 40% of all births in the U.S. were to unmarried women. This amounted to 1,604,870 children born outside of wedlock.<sup>35</sup> The 2014 numbers actually represent a decline from the highest level of unmarried childbearing in 2008.<sup>36</sup> However, the fact that procreation can and does happen outside the context of marriage does not change the historical Christian position that marriage is the only appropriate context for procreation. Augustine believed that childbearing in marriage made fertility honorable. God gave his command to be fruitful and multiply to the man and woman within the context of the first marriage. Childbearing within marriage is affirmed throughout Scripture while non-marital childbearing is considered a stigma.<sup>37</sup>

Introducing donor sperm and/or eggs into the procreative process brings another party into the procreative purpose of marriage. The child is no longer the biological offspring of the husband and wife into whose home he/she is born; instead, he/she is the offspring of the husband and egg donor, or the wife and sperm donor, or both egg and sperm donors. The marriage of a husband and wife in this scenario is, therefore, no longer the context for

<sup>33</sup>Mark F. Rooker, *The Ten Commandments: Ethics for the Twenty-First Century*, (Nashville: B&H Academic, 2010), 137.

<sup>34</sup>Augustine, *Genesis*, 78.

<sup>35</sup>Brady E. Hamilton, et al., “Births: Final Data for 2014,” *National Vital Statistics Reports* 64 (December 23, 2015), accessed 4 October, 2016, [http://www.cdc.gov/nchs/data/nvsr/nvsr64/nvsr64\\_12.pdf](http://www.cdc.gov/nchs/data/nvsr/nvsr64/nvsr64_12.pdf).

<sup>36</sup>Ibid.

<sup>37</sup>See Deut 23:2.

procreation. Third-party gametes open the door to other contexts for procreation outside marriage, such as the use of gestational surrogates for birth.<sup>38</sup>

The introduction of the gamete donor(s) into the procreative process complicates the family situation and imposes a new model upon God's design for procreation. Budziszewski notes, "What then are the natural meanings and purposes of the sexual powers? One is procreation—the bringing about and nurture of new life, the formation of families in which children have moms and dads."<sup>39</sup> From both Scripture and natural law, we see that the married couple is the mechanism by which children are designed to enter the world. Procreation apart from marriage introduces circumstances for both the child and the couple beyond God's original design. Budziszewski further states, "Plainly, the union of the spouses is at the center of our procreative design. Without it, procreative partnerships could hardly be expected to endure in such a way as to generate sound and stable families."<sup>40</sup>

Another interesting critique of the use of third-party gametes for procreation comes from a distinction between procreation and reproduction. Although the terms are often used synonymously, Gilbert Meilaender challenges us to think of them differently. He states, "A child who is thus begotten, not made, embodies the union of his father and mother. They have not simply reproduced themselves, nor are they merely a cause of which the child is the effect. Rather, the power of their mutual love has given rise to another who, though different from them and equal in dignity to them, manifests in his person the love that unites them."<sup>41</sup> Since having a child is procreation, it reflects the life-giving nature of the bond of marriage. Having a child is not simply the mechanical reproduction of a machine. With that in mind, Meilaender goes on to critique the use of third-party gametes by saying:

More fundamental, though, is the fact that use of donated gametes—whether in artificial insemination by donor or in fertilization in the laboratory—destroys precisely those features that distinguish procreation from reproduction. Lines of kinship are blurred and confused; the child begins to resemble a product of our wills rather than the offspring of our passion; and the presence of the child no longer testifies to and embodies the union of his parents.<sup>42</sup>

<sup>38</sup>Gestational surrogacy involves a woman who is not the biological mother of the child to carry the child and give birth. Hollinger clarifies, "In this form [gestational surrogacy] the gametes come from both the husband and wife of the couple wanting the child. The surrogate is merely the carrier of the child and has no biological tie to the child." Hollinger, *The Meaning of Sex*, 212–13. In addition to the form Hollinger describes, the gametes could also be third-party gametes.

<sup>39</sup>Budziszewski, *On the Meaning of Sex*, 24.

<sup>40</sup>*Ibid.*, 26.

<sup>41</sup>Gilbert Meilaender, *Bioethics: A Primer for Christians*, 3rd ed. (Grand Rapids: Eerdmans, 2013), 15.

<sup>42</sup>*Ibid.*, 16.

Meilaender deems the lines of kinship established through the child-bearing process in the context of marriage to be an essential element to procreation. This is what moves us from reproduction to procreation, and the introduction of third-party gametes violates the procreative direction of marriage.<sup>43</sup> Thus, procreation using third-party gamete donation undermines the union of the married couple and violates the marital sanctity of the procreative process.

### **Third-Party Gametes and Unity**

The intersection between third-party gamete donation and the purpose of unity is the most complicated issue for this paper to address. On one hand, someone may say that a husband and wife can remain in perfect unity with one another even while participating in the procreative process with donor sperm and/or egg. In fact, some may even say that having a child through this means could even increase the unity of marriage by fulfilling the purpose of procreation which is greatly desired.<sup>44</sup> On the other hand, the use of donor sperm or eggs could drive a wedge between the couple as one spouse is identified as the infertile partner and incapable of begetting children.

Augustine provides an interesting look at this particular good of marriage that can be applied to the question of gamete donation. While the primary good of marriage in his mind may be the begetting of children, he recognizes that it is not the only purpose. He says, “And this seems not to me to be merely on account of the begetting of children, but also on account of the natural society itself in a difference of sex.”<sup>45</sup> This “society” is the unique bond between a man and a woman. He continues to speak of the purity and sanctity of marriage even in the face of having no children. Whether the absence of children is caused by age, loss, or infertility, he highlights the fact that unity and fidelity in marriage are maintained through an exclusive relationship between husband and wife.

At a later point in the same treatise, Augustine specifically mentions the effect of barrenness on a marriage. He writes:

For it is in a man’s power to put away a wife that is barren, and marry one of whom to have children. And yet it is not allowed; and now indeed in our times, and after the usage of Rome, neither

<sup>43</sup>Meilaender responds to a critique comparing the use of third-party gametes to adoption because it too blurs the lines of kinship. In contrast to the use of third-party gametes, Meilaender considers adoption to be an emergency measure to care for a child whose biological parents cannot or will not care for him/her. He states, “Its [Adoption’s] principal aim must not be to provide children for those who want them but are unable to conceive them. . . . The aim of adoption, by contrast, should be to serve and care for some of the neediest among us.” *Ibid.*, 18.

<sup>44</sup>Gunilla Sydsjö, et al., “Relationships in oocyte recipient couples—a Swedish national prospective follow-up study,” *Reproductive Health* 11 (2014), accessed 4 October, 2016, <http://www.reproductive-health-journal.com/content/11/1/38>.

<sup>45</sup>Augustine, “On the Good of Marriage,” 400.

to marry in addition, so as to have more than one wife living: and, surely, in case of an adulteress or adulterer being left, it would be possible that more men should be born, if either the woman were married to another, or the man should marry another. And yet, if this be not lawful, as the Divine Rule seems to prescribe, who is there but it must make him attentive to learn, what is the meaning of this so great strength of the marriage bond?<sup>46</sup>

Augustine excludes both polygamy and divorce for the purpose of subsequent remarriage as options for producing offspring. This is due to the theological significance of the unity of marriage. The bond is so strong because it points to “some greater matter from out this weak mortal state of men.”<sup>47</sup> The greater matter is the bond between Christ and the church to which marriage points (Eph 5:31–32). In much the same way that Christ stays true to his bride and continues in unity despite her difficulties, the husband must stay true to his wife. Despite the difficulties that may come to the church, the bond between Christ and his bride grows deeper with time. Even when the pain of infertility hits home, a husband and wife grow deeper in unity by weathering the storms together. This is one way in which the husband and wife demonstrate the analogous unity of Christ and the church. The bond grows through both good times and bad.

Introducing third-party gametes into the procreative process violates the distinctive unity of marriage by introducing a third party into the bond of marriage for the purpose of attaining a particular end. Meilaender offers this extended commentary on the connection between unity and procreation with third-party gametes:

There are, then, good reasons for Christians to reject any process of assisted reproduction that involves sperm or ova donated by a third party. Even if the desire of an infertile couple to have children is laudable and their aim praiseworthy, even if we know of instances in which assisted reproduction seems to have brought happy results, it is the wrong method for achieving those results. What we *accomplish* may seem good; what we *do* is not. For in aiming at this desired accomplishment we begin to lose the sense of biological connection that is important to human life, we tempt ourselves to think of the child as a product of our rational will, and we destroy the intimate connection between the love-giving and life-giving aspects of the one-flesh marital union. We should not hesitate to regard reproduction that makes use of third party collaborators as wrong—even when the collaboration seems to be in a good cause.<sup>48</sup>

<sup>46</sup>Ibid., 402.

<sup>47</sup>Ibid.

<sup>48</sup>Meilaender, *Bioethics*, 18–19.



While the end of procreation is good and desirable, it is not something to be pursued with the use of third-party gametes, according to Meilaender, because it interferes with the unique bond that marriage brings. The connection between the love-giving and life-giving aspects of the union of marriage is essential to the nature of marriage. In short, the end does not justify the means because the means undermines a purpose of the institution of marriage. Therefore, pursuing procreation through the use of third-party gamete donation violates the distinctive concept of unity in all aspects of marriage, including procreation.

### Conclusion

Using the three Augustinian goods, or purposes, of marriage, we have seen that the use of third-party gametes disrupts God's intended design for marriage. That leaves us with the final question of whether or not we should label such a disruption as adultery. The fidelity of marriage is violated by the use of donated gametes through the introduction of a third (and possibly fourth) party into the marriage relationship. Even if that person is an anonymous donor, he/she is a participant in the marital act that is intended to be exclusively between husband and wife. The procreative function of marriage is also violated by the use of donated gametes. Yes, procreation occurs in ART with third-party gametes, but it is not procreation within the God-designed context of marriage. The biological reality is that ART with donor gametes is a sexual function. Despite the lack of sexual intercourse between the parties, sexual reproduction does occur in this procreative process. Thus, the offspring of this sexual process come from a physiological joining of individuals other than the husband and wife. In every other context before ART technology was available, such procreation would have been the result of sexual immorality. Taking the sexual reproductive process out of the bedroom and into the medical lab simply changes the location, not the fact that the elements involved in reproduction (i.e., egg and sperm) have been joined. Finally, the unity of marriage is violated by third-party gamete donation. Scripture does not allow for the dissolution of marriage when one spouse is infertile. In addition, it does not allow for plural marriage in order to facilitate childbearing. Third-party gamete donation is most akin to open marriage. In open marriage, the spouses invite other sexual partners into their marriage bed. Since the biblical model of marriage is exclusive and monogamous, open marriage would clearly be considered adulterous. In third-party gamete donation, the spouses invite other partners into their relationship—even when such partners are anonymous—for the sake of procreation, which was exclusively reserved for marriage in Scripture.

In light of these violations of the goods and purposes of marriage, it seems that the use of third-party gametes in ART by a married couple could be labeled as adultery. In much the same way as the Old Testament prophets declared idolatry as adultery through the analogy of marriage, the

use of third-party gametes is analogous to adultery through its violation of the God-ordained purposes of marriage. If such a classification were made, it may be helpful to identify it as reproductive adultery in order to distinguish it from the act of illicit sexual intercourse, but the biblical prohibitions would remain intact. The use of third-party gametes should then be openly addressed by the church and discouraged due to its violation of the God-ordained purposes of marriage.

