

ETHICS & MEDICS

A Commentary of The National Catholic Bioethics Center on Health Care and the Life Sciences

THE CONCEIVEX KIT RECONSIDERED

In the July 2009 issue of *Ethics & Medics*, Stephen Napier advances two conclusions regarding the morality of the Conceivex Conception Kit (CCK).¹ First, this fertility technique assists the conjugal act and would therefore be a morally acceptable type of treatment for couples struggling with certain types of infertility.² Second, the condom or “semen collector” that the husband wears during intercourse does not have to be perforated, since the procreative goal of semen collection renders the conjugal act fecund, or ordered to procreation.³ Here I present a moral analysis whose verdict impugns both of Napier’s conclusions.

Background Considerations

An infertile couple using the CCK follows a five-step process. First, the couple charts their fertility using ovulation predictors to identify the maximum fertile window. Second, the husband uses a sperm-friendly intimate moisturizer and wears a perforated semen collector during the fertile sex act. Third, after coitus, the couple transfers the semen that has collected at the base of the perforated sheath into the conception cap. Fourth, the husband or wife inserts the conception cap onto the wife’s cervix. The soft dome of the cap then collapses, putting the semen into close contact with her cervical mucus for up to six hours. Finally, the couple tests for pregnancy and, if the wife is pregnant, consults their obstetrician.

Four principles ground my ethical analysis of the CCK. First, the one context worthy of the dignity of the conception of a human being is a loving act of intercourse between husband and wife that is open to life (i.e., an integral act of sex during which the husband deposits sperm in his wife’s vagina).⁴ Second, the new human life of the child ought to be the fruit of a loving act of sex between his or her parents.⁵ Third, any homologous infertility treatment that assists the conjugal act to achieve its natural end of pregnancy could be moral.⁶ And, fourth, fertility treatments must respect the life and bodily integrity of the newly conceived human being.⁷

The difficulty of evaluating infertility techniques that could be categorized as assistance is that, although the Church frequently reiterates the principle that originated with Pope Pius XII⁸—any infertility treatment that assists the conjugal act to achieve its natural end could be moral—the Church refrains from applying the norm

to specific examples of infertility treatments. I presume this lack of specificity means the Church recognizes that there is more than one way to legitimately interpret the “assistance” norm. Minimally, however, the principle requires that the infertility treatment under consideration includes an act of intercourse. Therefore, since it makes no sense to modify certain techniques to include a sex act, in vitro fertilization and intracytoplasmic sperm injection are examples of infertility treatments that replace rather than assist the conjugal act to achieve its natural end.

Before *Conceivex* was developed, the question of whether fertility techniques could be characterized as assistance was limited to the use of the husband’s sperm in the context of GIFT (gamete intrafallopian transfer)⁹ and artificial and intrauterine insemination. *Donum vitae* states that “if the technical means facilitates the conjugal act or helps it to reach its natural objectives, it can be morally acceptable.”¹⁰ In an effort to determine how these homologous infertility treatments would qualify as assistance to the conjugal act, some moral theologians postulated that if GIFT, artificial insemination, or intrauterine insemination were preceded by an act of marital sex in which the husband wore a perforated sheath to collect some of the male ejaculate which would subsequently be transferred to the vagina (artificial insemination), uterus (intrauterine insemination), or fallopian tube (GIFT), then the “modified” fertility technique would be assisting the conjugal act to achieve its natural end, namely, pregnancy.

Previous Analysis

Before I took up my position as ethics director at the Pope Paul VI Institute, I defended the morality of the modified GIFT and insemination procedures. However, after observing how NaProTechnology’s disease-based approach to infertility employs medical and surgical resolution of the ovulatory, organic, and hormonal pathologies that prevent conception so that the infertile couple can bring their natural acts of sexual love to their perfection in achieving

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A NEGATIVE MORAL ASSESSMENT

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DEFENDING CONCEIVEX AS ASSISTANCE

A LOOK AT THE UNDERLYING LOGIC

Stephen Napier, Ph.D.

a pregnancy, I came to better understand the meaning of an infertility treatment that unambiguously assists the act of sex between spouses struggling with infertility.

Thus, I began to reevaluate my defense of the morality of the modified homologous techniques. I posed several questions that produced what I think are morally significant answers. First, if conception were to occur after the use of modified artificial or intrauterine insemination, which sperm do you think would, most likely, be responsible for the fertilization of the woman's ovum? Would it be the sperm that was part of the husband's ejaculate deposited in the woman's reproductive tract, or would it be sperm from the "enriched" semen collected at the base of the sheath? Although we can never know with 100 percent surety, we can say that, most probably, the husband's sperm that was responsible for fertilization of his wife's egg was from the semen that *was not a part of the integral act of sex* but was collected at the base of the sheath and subsequently taken to a laboratory, washed, enriched, and returned to the woman's reproductive tract via the insemination process. Second, if this be the case, in what sense could the child who was conceived as a result of these modified techniques be called the "fruit" of a loving act of sexual union between the spouses? And the answer, of course, is that a child conceived by means of the modified GIFT or insemination techniques could not, in most instances, be described as the fruit of a loving act of sex, in the specific sense the Church intends it.

What helped to confirm my moral conclusion that modified homologous techniques replace and do not assist the conjugal act was anecdotal testimony from four infertile couples who had tried modified intrauterine insemination, did not conceive, and subsequently consulted me about NaProTechnology's infertility protocols. When I asked them if they had any sense, retrospectively, whether modified intrauterine insemination assisted or replaced their act of sex, they admitted that, for them, the reality on the ground was, "Let's hurry up with the sex act so we can get the semen specimen down to the laboratory without compromising the technique of insemination." In other words, the experience left them feeling that the center of things was the technique of insemination and that the act of sex was merely instrumental to getting the process done. The couples experienced their act of sex as assisting the technique rather than, as it should be, the technique assisting their conjugal act.

Analysis of Napier's First Conclusion

Although the Conceivex manual insemination technique does not involve a trip to the laboratory or technical pre- and peri-insemination processes, it resembles the modified GIFT and artificial and intrauterine insemination procedures in its principal morally deficient sense. An act of marital intercourse within the context of the manual cervical insemination could also be defined as an act directly intended to collect semen. And in that instrumental sense, because the act of sex is not primarily intended as a marital act of sexual union, the semen collector (perforated or unperforated) and the manual

insemination technique of the Conceivex method replace or vitiate the conjugal act.

Hence, the CCK is, at best, ambiguous in its ability to "assist the conjugal act" to achieve its natural end of pregnancy—ambiguous because the husband's spermatozoa that are collected in the perforated condom (and subsequently transferred to the cervical cap and manually deposited onto the wife's cervix) were not a part of the marital act of intercourse, i.e., were not part of the couple's reciprocal act of self-gifting which, by definition, ought to include the gift of their reproductive cells.

Moreover, if pregnancy occurs as a result of using the CCK, I also fail to see how the child could be described as the "fruit of a loving act of intercourse" in the strict sense that the Church intends. A child is the fruit of the marriage act when he or she is conceived within an integral act of sexual love between his parents, an act of complete mutual donation that includes the matter of the couple's reproductive cells, i.e., one of the father's sperm cells initially deposited in his wife's vagina that subsequently swims up to the fallopian tubes where it fertilizes his wife's ovum.

Analysis of Napier's Second Conclusion

In trying to decipher the rationale behind Napier's moral opinion about collecting semen with an unperforated condom, I think he is presupposing one or both of the following points:

- Use of an unperforated condom to collect semen within an act of sex (for the purpose of achieving a pregnancy) changes the condomitic act to another kind of act, a morally neutral or good act of "semen collection" for the purpose of achieving a pregnancy.

If this is the reasoning behind Napier's conclusion, why wouldn't the couple also be morally justified in choosing to collect the semen by masturbation, since the good intention (which would then render the act of masturbation morally licit) would be the same: to collect semen to be used in a process of cervical insemination that could achieve pregnancy?

- The good intention (for the sake of conceiving) changes the act of condomitic sex into a morally good act.

But condomitic sex is an intrinsically evil act which does not "become moral" by virtue of good circumstances or good intentions.

Either presupposition seems to be morally dubious. I believe, to the contrary, that the use of an unperforated condom in the context of the CCK is contraceptive: the act of condomitic sex does "propose" both as a means and as an end to render that act of sex contraceptive by virtue of wanting all the ejaculate to be deposited in the condom.

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- ¹Stephen Napier, "Morality of 'The Conception Kit': A New Product for Infertility," *Ethics & Medics* 34.7 (July 2009): 3-4.
- ²The Conceivex system is especially designed for couples experiencing male infertility factors such as low sperm count or poor sperm motility, or female infertility factors such as a tilted uterus or a highly acidic vaginal environment.
- ³The CCK advises its Catholic users to perforate the condom to comply with Catholic moral principles. Although well intended, this instruction implies that perforating the condom to facilitate an integral act of sex is some private truth for Catholics. In reality, the CCK should instruct all couple using this product to perforate the condom in accord with the objective natural law behind the necessity of engaging in acts of sex that are truly marital (i.e., open to life and to the procreative good).
- ⁴Donald McCarthy, "Gift? Yes!" *Ethics & Medics* 18.9 (September 1993): 3.
- ⁵Congregation for the Doctrine of the Faith, *Donum vitae*, II.A.1 and II.A.2; and CDF, *Instruction Dignitas personae on Certain Bioethical Questions* (December 8, 2008), n. 12.
- ⁶CDF, *Donum vitae*, II.B.6.
- ⁷*Ibid.*, I.1, I.5, and II.B.7; and *Dignitas personae*, n. 12.
- ⁸Pius XII, Address *Votre presence* on the occasion of the Fourth International Conference of Catholic Physicians (September 29, 1949).
- ⁹The GIFT method also involves aspirating ova from superovulated ovaries of the wife and transferring them together with the husband's sperm to the wife's fallopian tube via a fine-gauge catheter.
- ¹⁰CDF, *Donum vitae*, II.B.6.