

An Overview of the Embryo Adoption Debate

*Teofilo Giovan S. Pugeda, III**

Department of Theology, Ateneo de Manila University, Quezon City, Philippines

Abstract: In vitro fertilization (IVF) is opposed by the Catholic Church because it replaces the conjugal act. However, IVF has resulted in an ethical issue that the Catholic Church does not have a clear position on. What to do with the undesired cryopreserved embryos resulting from the IVF process? The Congregation for the Doctrine of the Faith, in its 2008 instruction on certain bioethical questions *Dignitas Personae*, commented on three proposals on what to do with them and stated that the situation for abandoned embryos “cannot be resolved.” But what about those not abandoned but undesired? Even before the issuance of *Dignitas Personae*, a debate developed regarding the third proposal of embryo adoption, which continues unresolved. We will explore the embryo adoption debate from 2007-2018 through the arguments of fifteen authors, with eight of them arguing not in favor of it and seven arguing in favor.

Keywords: assisted reproductive technology, *Dignitas Personae*, *Donum Vitae*, embryo adoption, in vitro fertilization, sexual ethics

The Development of Assisted Reproductive Technology

Assisted Reproductive Technology (ART) refers to a medical technique that “allows scientists to manipulate the fertilization process in order to bypass some pathological obstacles such as blocked fallopian tubes and non-functioning ovaries in the females, and blocked vas deferens and

*Teofilo Giovan S. Pugeda, III can be contacted at tpugeda@ateneo.edu.

low sperm count in the males.”¹ ART dates back to the 1890s when rabbit embryos already fertilized inside an Angora rabbit’s womb were transplanted by Walter Heape into a Belgian hare rabbit’s womb. Up until the early 1930s, ART remained largely theoretical. A breakthrough occurred in 1934 when the eggs and sperm of rabbits were successfully fertilized on a glass top of a watch by Gregory Pincus and subsequently implanted into a rabbit; other attempts were successful with rats. However, live births were not achieved by either animal. In 1938, John Rock together with Miriam Menkin tried to replicate the process with human eggs and sperm. By 1944 they were able to successfully fertilize in vitro a human embryo. Although not fully gestated, this marked the first time human fertilization occurred outside the sexual act. The next breakthrough was in 1959 when Min Chueh Chan achieved the live birth of a rabbit via in vitro fertilization (IVF). The next goal was to achieve the same with a human. This was precisely what Carl Wood and John Leeton tried to do in 1973, which would have been a success had the pregnancy not ended ectopically in less than a week.²

Robert Edwards, who had fertilized a human embryo in 1967, was in collaboration with Patrick Steptoe to also achieve live human birth via IVF. After an ectopic pregnancy in 1976, they finally achieved a successful live birth via IVF in 1978 with an infertile couple, Lesley and John Brown. Their child was named Louise. Within six months, two more successful live births via IVF were achieved. Given this quick succession, it was just a matter of improving the process since the chances for live birth via IVF remained very low. The first major improvement was in 1978 when Australian scientists developed hyper-stimulation of ovaries to retrieve more eggs than natural to fertilize more embryos for implantation for higher chances of live birth. This prompted the corresponding refinement of cryopreservation processes to store excess embryos. To date, millions of human embryos have been fertilized via IVF leading to at least 8 million live births³ and at least 400 embryo adoptions.⁴ Moreover, other ART methods developed, such as intrauterine insemination, intracytoplasmic sperm injection, and lower tubal ovum transfer. Among all these, IVF remains the predominant ART method.

¹ Remah Moustafa Kamel, “Assisted Reproductive Technology after the Birth of Louise Brown.” *Journal of Reproduction & Infertility* 14, no. 3 (2013): 96–109. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3799275/#__ffn__sectitle.

² An ectopic pregnancy occurs when the embryo attaches to one of the Fallopian tubes instead of the uterus, a situation which endangers the embryo’s and mother’s health.

³ European Society of Human Reproduction and Embryology. “More than 8 million babies born from IVF since the world’s first in 1978: European IVF pregnancy rates now steady at around 36 percent, according to ESHRE monitoring.” *ScienceDaily*. www.sciencedaily.com/releases/2018/07/180703084127.htm.

⁴ The first case was in 1997 when the organization Nightlife Christian Adoptions organized the first program to allow couples to adopt cryopreserved embryos. Marlene Strege gave birth to a baby named Hannah.

The current process for an IVF begins with preliminary tests conducted on the woman and man to assess the health of the ovary, eggs, uterus, and semen. After approval comes a cycle of broadly five steps. The specifics can vary depending on the facility but the flow remains the same. As explained by William F. Collington, Jr, the first step is ovulation induction or the hyper-stimulation of ovaries through hormonal ingestion or injection to produce more eggs than natural. The second step is egg retrieval involving an ultrasound-guided needle entering the vaginal cavity. The third step is the collection of semen from the husband, partner, or a stranger, often through masturbation. The fourth step is fertilization where the retrieved eggs are placed in nutritive media in a Petri dish and mixed with the collected semen in a ratio of 1:50,000-100,000, respectively. As a result, multiple embryos are produced. The fifth is embryo implantation where around three embryos are implanted in the uterus to increase the likelihood of pregnancy. Excess embryos are cryopreserved or frozen in liquid nitrogen for later use if all implanted embryos fail to gestate, a common event given the highly technical nature of the process. In total, the process can take around three months with two or three cycles undertaken to increase the chances of pregnancy. Even then, the success rate of pregnancy remains below fifty percent. In the event of failure, the fifth step is repeated until a successful pregnancy is achieved and if there is a desire to have more children.

The Teachings of the Catholic Church

In the wake of the first IVF live birth, those ART deemed morally illicit received opposition from the Catholic Church (Church),⁵ whose officials and experts reacted negatively at the awarding of the Nobel Prize in Physiology or Medicine to Robert Edwards in 2010.⁶ The opposition of the Church to ART deemed morally illicit is rooted in its doctrines on the nature of the conjugal act and the respect due to a person's dignity from conception. Notably, this opposition is directed only to ART deemed morally illicit (i.e. those that replace the conjugal act) implying that ART that acts "as an aid to the conjugal act and its fertility are permitted."⁷ Concerning the nature of the conjugal act, the Church teaches that conception of a child can morally

⁵ In recognition of the diversity within the Catholic Church, the phrase "Church" as used in this overview refers to its Ordinary Magisterium exercised through the Congregation for the Doctrine of the Faith.

⁶ Giuseppe Benagiano, Sabrina Carrara, and Valentina Filippi. "Robert G Edwards and the Roman Catholic Church." *Reproductive Biomedicine Online* 22, no. 7 (June 1, 2011): 665–72. [https://www.rbmojournal.com/article/S1472-6483\(11\)00157-X/fulltext](https://www.rbmojournal.com/article/S1472-6483(11)00157-X/fulltext).

⁷ Congregation for the Doctrine of the Faith, *Dignitas Personae*, December 8, 2008, Vatican Archives, https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20081208_dignitas-personae_en.html, 12. (For a discussion on distinguishing between ART that aid the conjugal act and those that replace it, see: Doerfler, John F. "Assisting or Replacing the Conjugal Act: Criteria for a Moral Evaluation of Reproductive Technologies." *The Linacre Quarterly* 67, no. 3 (August 2000): 22–66. <https://doi.org/https://doi.org/10.1080/20508549.2000.11877583>).

occur only in the conjugal act (i.e. sexual intercourse in marriage) which has two integral aspects, the procreative (i.e. openness to the transmission of life) and the unitive (i.e. physical self-giving of the spouses to each other). Since both are integral to the conjugal act, the Church warns that “[n]ever is it permitted to separate these different aspects to the point of excluding positively either the intention of procreation or the conjugal relation.”⁸ When taken together, “the conjugal act preserves in its fullness the sense of true mutual love and its ordination towards [the person]’s exalted vocation to parenthood.”⁹ But when artificially separated, the conjugal act is replaced. IVF is a replacement of the conjugal act because the procreative aspect is artificially separated from the unitive aspect. Semen collection through masturbation is also held to be intrinsically wrong. IVF circumvents conjugality altogether when sperm from a stranger is used to fertilize the egg, thereby further undermining the moral unity between marriage and procreation.

Regarding respect for human dignity from conception, IVF, as noted, results in multiple embryos, some of which are implanted in the woman but not all those fully gestate, whether by naturally perishing or direct elimination by potassium chloride poisoning for reasons that include malformation. The remaining embryos are cryopreserved for later use, if at all. Thousands have been kept cryopreserved indefinitely for years.¹⁰ Other options for these embryos are being thawed out, allowed to perish, then medically discarded, or being used for research purposes where they are destroyed. This haphazard attitude towards the embryos is considered by the Church as an affront to their human dignity. It teaches that human dignity begins at conception, and the logical implication of this is that “[b]ecause it should be treated as a person from conception, the embryo must be defended in its integrity, cared for, and healed like every other human being.”¹¹

Donum Vitae

The Congregation for the Doctrine of the Faith (CDF) elaborated on these doctrines in its 1987 document *Donum Vitae*. Succinctly put, *Donum Vitae* defends

⁸ Pius XII, “Allocution to the Members of the II World Congress of Fertility and Sterility,” May 19, 1956, Vatican Archives, https://www.vatican.va/content/pius-xii/fr/speeches/1956/documents/hf_p-xii_spe_19560519_fertilita.html. Original in French. Translation of United States Conference of Catholic Bishops used.

⁹ Paul VI, *Humanae Vitae*, July 25, 1968, Vatican Archives, https://www.vatican.va/content/paul-vi/en/encyclicals/documents/hf_p-vi_enc_25071968_humanae-vitae.html, 12.

¹⁰ In the United States of America alone, there were an estimated 600,000 cryopreserved embryos as of 2015. This number has surely risen and does not even account for the thousands of others in other countries. (see Jay Malone, “Ethics of Cryopreserved Embryo Adoption: Defrosting Dignitas Personae,” Catholic Health Association of the United States, November 25, 2019, <https://www.chausa.org/publications/health-care-ethics-usa/archives/issues/fall-2019/ethics-of-cryopreserved-embryo-adoption-defrosting-dignitas-personae>.)

¹¹ Catholic Church, *Catechism of the Catholic Church*, October 11, 1992, Vatican Archives, https://www.vatican.va/archive/ENG0015/___P82.HTM, 2323.

the notion that “the gift of human life must be actualized in marriage through the specific and exclusive acts of husband and wife, in accordance with the laws inscribed in their persons and in their union.”¹² With this notion in mind, according to John M. Haas, “[t]he document did not judge the use of technology to overcome infertility as wrong in itself. It concluded that some methods are moral, while others—because they do violence to the dignity of the human person and the institution of marriage—are immoral.”¹³ Despite the teachings of *Donum Vitae*, ART continued to expand globally in the next two decades. In the same period, “new biomedical technologies which have been introduced in the critical area of human life and the family have given rise to further questions, in particular in the field of research on human embryos, the use of stem cells for therapeutic purposes, as well as in other areas of experimental medicine.”¹⁴

Dignitas Personae

The CDF issued another document in 2008 entitled *Dignitas Personae*. According to Timothy F. Murphy, *Dignitas Personae* builds upon *Donum Vitae* in such a way that “[b]y its own account, *Dignitas Personae* offers no moral standards different from 1987, but it extends the standards from *Donum Vitae* to certain matters which were not in clear view [twenty-one] years earlier [italics added].”¹⁵ One topic that was significantly built upon was the freezing of embryos. Whereas *Donum Vitae* dedicates only one paragraph to the topic—

*The freezing of embryos, even when carried out in order to preserve the life of an embryo - cryopreservation - constitutes an offense against the respect due to human beings by exposing them to grave risks of death or harm to their physical integrity and depriving them, at least temporarily, of maternal shelter and gestation, thus placing them in a situation in which further offenses and manipulation are possible.*¹⁶

Dignitas Personae, instead, dedicates eight paragraphs to the topic. Concerning it, *Dignitas Personae* reiterates what *Donum Vitae* said but then adds five paragraphs on proposals of what to do with them because the CDF had taken note that—

¹² Congregation for the Doctrine of the Faith, *Donum Vitae*, February 22, 1987, Vatican Archives, https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19870222_respect-for-human-life_en.html, 5.

¹³ John M. Haas, “Begotten Not Made: A Catholic View of Reproductive Technology.” United States Conference of Catholic Bishops. United States Catholic Conference, Inc, 1998. <http://www.usccb.org/issues-and-action/human-life-and-dignity/reproductive-technology/begotten-not-made-a-catholic-view-of-reproductive-technology.cfm>.

¹⁴ *Dignitas Personae*, 1.

¹⁵ Timothy F Murphy, “Dignity, Marriage and Embryo Adoption: A Look at *Dignitas Personae*.” *Reproductive Biomedical Online* 23, no. 7 (December 2011): 860–68. [https://www.rbmojournal.com/article/S1472-6483\(11\)00316-6/fulltext](https://www.rbmojournal.com/article/S1472-6483(11)00316-6/fulltext).

¹⁶ *Donum Vitae*, 6.

Some of those who pose this question do not grasp its ethical nature, motivated as they are by laws in some countries that require cryopreservation centers to empty their storage tanks periodically. Others, however, are aware that a grave injustice has been perpetrated and wonder how best to respond to the duty of resolving it.¹⁷

Three proposals were mentioned: “use these embryos for research or for the treatment of disease,” “put [the embryos] at the disposal of infertile couples as a *treatment for infertility*,” and “prenatal adoption.”¹⁸ All three were commented upon by the CDF in different manners. After which, the CDF stated that “[a]ll things considered, it needs to be recognized that the thousands of abandoned embryos represent a *situation of injustice which in fact cannot be resolved* [original italics].”¹⁹ Some theologians would interpret *Dignitas Personae* as closing prenatal adoption as a moral option. In turn, other theologians would disagree with them and interpret *Dignitas Personae* as leaving it open. Understandably, a debate developed and continues unresolved. We will course through major arguments from both sides of the debate. However, before that begins, it is important to bear in mind the CDF’s full take on the issue—

The proposal that these embryos could be put at the disposal of infertile couples as a treatment for infertility is not ethically acceptable for the same reasons which make artificial heterologous procreation illicit as well as any form of surrogate motherhood; this practice would also lead to other problems of a medical, psychological and legal nature.

It has also been proposed, solely in order to allow human beings to be born who are otherwise condemned to destruction, that there could be a form of “prenatal adoption.” This proposal, praiseworthy with regard to the intention of respecting and defending human life, presents however various problems not dissimilar to those mentioned above.²⁰

In this overview, prenatal adoption and embryo adoption are considered similar terms. “Embryo adoption,” which was coined by the organization Nightlight Christian Adoptions, is used over alternative terms, such as “embryo donation,” “embryo rescue,” and “heterologous embryo transfer,” because the term “arguably captures more faithfully aspects of the experience of parties to the practice.”²¹ Embryo adoption is understood as the thawing of cryopreserved embryos to be implanted in a non-maternally related woman’s uterus to be raised by her. The arguments presented

¹⁷ *Dignitas Personae*, 19.

¹⁸ *Dignitas Personae*, 19.

¹⁹ *Dignitas Personae*, 19.

²⁰ *Dignitas Personae*, 19.

²¹ Sarah-Vaughan Brakman and Darlene F. Weaver, “The Ethics of Embryo Adoption and the Catholic Tradition.” Introduction. In *The Ethics of Embryo Adoption and the Catholic Tradition: Moral Arguments, Economic Reality, and Social Analysis*, 3–24. New York, NY: Springer, 2007.

here do not delve deeply into the moral differences between a married woman and a single woman, but the context makes clear if they apply to one or both. There is no discussion on whether the woman's sexual orientation is morally significant in choosing embryo adoption, but the CDF's statement on adoption by same-sex unions is to be considered.²² The period 2007 to 2018 was chosen because it represents the debate just before the issuance of *Dignitas Personae* up to a decade of response to it. Moreover, fifteen authors were selected based on their use of distinct arguments, without detriment to other authors who have written on embryo adoption before that period, in the same period, and since.²³ There are two points of agreement among the authors. The first point is that it is morally illicit to seek fertilization outside of the conjugal act, and the second point is that the cryopreserved embryo has human dignity. We now examine their arguments to see where they diverge.

Arguments Not in Favor of Embryo Adoption

William Stempsey

William Stempsey raises concern with the language employed to frame discussions regarding embryo adoption by suggesting that the terms “adoption,” “surrogacy,” and “rescue” limit the discussions by influencing the way questions are to be analyzed thereby drawing the discussions away from other moral issues involved in the practice.²⁴ Instead, he favors the term “Heterologous Embryo Transfer (HET),” as morally neutral. To bolster his position, he points to the nuances always attached to analogy and metaphor. In this sense, words used analogously and metaphorically do not univocally transmit the same precise meanings from one phenomenon to another. He admits, though, that there are values brought forth from analogies and metaphors. To use an example, to say that “grace washes my soul” is to highlight a truth in a non-literal sense by likening grace with water. Stempsey suggests that analogy and metaphor require caution “for the metaphor chosen is likely to presume

²² Congregation for the Doctrine of the Faith, Considerations Regarding Proposals To Give Legal Recognition to Unions between Homosexual Persons, 3 June 2003, Vatican Archives, https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20030731_homosexual-unions_en.html.

²³ Although this overview is limited to fifteen authors, other authors not in favor of embryo adoption are Nicholas Tonti-Filippini, Luke Gormally, Tracy Jamison, and Irene Alexander, while other authors in favor of embryo adoption are Germain Grisez, William May, Edward Furton, and Glenn Breed. For European perspectives, see: Justo Aznar, Miriam Martínez-Peris, Pedro Navarro-Illana, “Moral assessment of frozen human embryo adoption in the light of the Magisterium of the Catholic Church,” 23, no.1 (2017): 137-149.

²⁴ William E Stempsey, “Heterologous Embryo Transfer: Metaphor and Morality,” in *The Ethics of Embryo Adoption and the Catholic Tradition Moral Arguments, Economic Reality and Social Analysis* (New York, NY: Springer, 2007), pp. 25-42.

the answer to the moral conundrum under consideration.” As applied to embryo adoption, he is concerned that “using this term leads to a premature closure of the moral question.” He believes that—

To call HET an adoption misses some clear differences between the two practices and risks begging the moral question. It is true that “adoption” is used to signify the permanent assumption of care for all sorts of things, dogs and cats, for example. But the risk in using “adoption” in the case of HET is that if we see the adoption of a needy child as good, then assuming that the embryo is human life can lead to the premature conclusion that HET is just like adoption of a needy child. But that is precisely the moral question to be decided.²⁵

Building upon his caution concerning the terminology employed, Stempsey points to the unequal conditions the embryos find themselves in throughout the whole process from fertilization to implantation. Upon fertilization, already some embryos are deemed more viable than others for implantation. The ones deemed less viable are cryopreserved. But upon thawing, at least 50% do not survive and for the remaining that do survive, some are healthier than others. Diminishing returns occur when the non-implanted surviving embryos are cryopreserved again. In this scenario, Stempsey questions the justice of choosing which embryos are to be prioritized in HET. He writes “[p]resuming that each embryo has equal human dignity, and given the difficulty in judging viability of frozen embryos, the task of fair selection of which embryos will be implanted is daunting.”²⁶

Stempsey is concerned with the impact HET could have on Catholic healthcare facilities. For one thing, HET involves technical procedures that may divide the attention of an already challenged healthcare staff exercising stewardship over limited resources. At the same time, the distribution of cooperation with the morally unacceptable IVF is not always clear. IVF cannot be conducted in Catholic healthcare facilities; hence decisions to dispose of unwanted embryos would most likely be made in the IVF clinic. He notes that “[i]f such quality decisions are left to the IVF clinic and only those embryos that pass muster are sought by the Catholic hospitals, it seems that the cooperation becomes more proximate.”²⁷ Important to also consider is the possible scandal if HET is practiced in Catholic healthcare facilities. The faithful may be confused with the Church’s teachings if HET is accepted but IVF is not. As a possible resolution, he suggests thawing the embryos to perish as a moral option by invoking the ordinary-extraordinary means of treatment distinction. Cryopreservation may constitute an extraordinary means that calls for termination.

²⁵ Stempsey, “Heterologous Embryo Transfer: Metaphor and Morality,” 29.

²⁶ Stempsey, “Heterologous Embryo Transfer: Metaphor and Morality,” 34.

²⁷ Stempsey, “Heterologous Embryo Transfer: Metaphor and Morality,” 38.

In the end, Stempsey does not explicitly reject HET but states that “[w]hile there may be no argument for the intrinsic evil of HET that is compelling to all, it would be improper to conclude that this should justify Catholic hospitals to venture into HET”²⁸

Catherine Althaus

Catherine Althaus furthers the debate by integrating a theology of the body analysis into it.²⁹ Like Stempsey, she shies away from the term “embryo adoption,” but unlike him, she prefers the term “embryo transfer.” She focuses on the moral object of embryo transfer within the gradual progression of the nuptial stages of life. She presents the different dimensions of parenthood, namely (1) material capacity, received upon one’s conception, (2) physiological capacity, developed during adolescence, (3) aspirational capacity, experienced during courtship, (4) marital capacity, shared within matrimony, (5) and actual marital capacity, normalized upon the child’s conception. Concurrently as the last, (6) genetic motherhood and fatherhood begins under which the mother has (7) gestational motherhood while the father has (8) social fatherhood. Upon birth, gestational motherhood ends, and (9) social motherhood commences. In this progression, she asserts “that genetic and gestational motherhood are intrinsically connected through, and within, the body of the woman.” As a result, she believes that “gestational motherhood emanates from genetic motherhood as an ontological extension of the conjugal union of husband and wife, because the embryo is a new personal embodiment of that union.”³⁰ In other words, by the genetic and gestational motherhood of the woman, her embryo is ontologically tied to her and her spouse as part of the lived reality of the conjugal union. Embryo transfer, in this sense, disrupts this lived reality.

Althaus, agreeing with Stempsey, also questions the equation between receiving an embryo and receiving a child through traditional adoption. In the former, she believes that the woman seeking embryo transfer is more akin to the woman seeking an IVF, albeit indirectly. In her words, “[a]ccording to the theology of the body, embryo transfer is the type of act that continues the domination and objectification of each of the parties to the act – the man, the woman, and the child – that is associated with the IVF process that marked the child’s conception.”³¹ Nevertheless, she does critique traditional adoption as another form of disruption

²⁸ Stempsey, “Heterologous Embryo Transfer: Metaphor and Morality,” 40.

²⁹ Catherine Althaus, “Human Embryo Transfer and the Theology of the Body,” in *The Ethics of Embryo Adoption and the Catholic Tradition Moral Arguments, Economic Reality and Social Analysis* (New York, NY: Springer, 2007), pp. 43-68.

³⁰ Althaus, “Human Embryo Transfer and the Theology of the Body,” 51.

³¹ Althaus, “Human Embryo Transfer and the Theology of the Body,” 52.

to the lived reality of the conjugal union if the genetic parents are capable of raising the child without harm but do not do so. Still, traditional adoption remains of a different moral order than embryo transfer. She clarifies that “[traditional] adoption creates a socially constructed parenthood that recognizes a “completed” conjugal act (inclusive not only of conception but also gestation and birth) whereas the act of embryo transfer directly aims to emulate the conjugal act by directly contributing to the attempt to simulate normal conception, gestation, and birth.”³² From this line of thought, what occurs in embryo transfer is a sort of simulated pregnancy.

Althaus places this simulated pregnancy vis-à-vis the marital covenant. To be pregnant “must be inseparably procreative and unitive, and it is this openness to inseparable procreation and union within the marital covenant that has to be chosen.”³³ In her view, embryo transfer resulting in a simulated pregnancy violates this marital covenant precisely because it is neither procreative (as morally understood in the conjugal act) nor unitive. As a consequence, the embryo is deprived of the familial setting in which the conjugal act takes place. For Althaus, this means that the embryo does not have the “conjugal union and communion of persons achieved in the bodies of [a] genetically bonded mother, father, and child.”³⁴ Unfortunately, she does not provide any actions on how to remedy the situation. In the end, she concludes that “[t]he theology of the body embedded in the nuptial stages of life argument that [she has] proposed...is one that supports human dignity by being personalistic and relational where all parties are treated as subjects (and not objects) in their own right while being in communion.”³⁵

Tadeusz Pacholczyk

Tadeusz Pacholczyk acknowledges in light of the children born from embryo adoption that “each frozen embryo is not an anonymous grouping of cells, but a child with his or her own specific traits.”³⁶ His opinion, however, is that embryo adoption is morally illicit. His main premise is that transferring an embryo for whatever reason is *de facto* wrong. Similar to Althaus, he defends the proper exercise by spouses of their procreative powers exclusively for each other. For Pacholczyk, “[e]mbryo adoption... opens [the woman’s] womb to an embryo produced by strangers, and [he] would posit that such an action illicitly invokes her procreative powers apart from a marital

³² Althaus, “Human Embryo Transfer and the Theology of the Body,” 54.

³³ Althaus, “Human Embryo Transfer and the Theology of the Body,” 59.

³⁴ Althaus, “Human Embryo Transfer and the Theology of the Body,” 62.

³⁵ Althaus, “Human Embryo Transfer and the Theology of the Body,” 65.

³⁶ Tadeusz Pacholczyk, “On the Moral Objectionability of Human Embryo Adoption,” in *The Ethics of Embryo Adoption and the Catholic Tradition Moral Arguments, Economic Reality and Social Analysis* (New York, NY: Springer, 2007), pp. 69-83.

act with her husband.”³⁷ As designed by God, the woman is called to exercise her procreative powers in direct collaboration with her husband, and not without him by directly impregnating herself even with the consent of her husband. Building on Althaus’ notion regarding the marital covenant, Pacholczyk reminds us that the lived reality of the conjugal act is greater than either of the spouses or them together because the third party to every marriage is God, and therefore neither of the spouses is empowered to deviate from the language of their bodies as continuously written by God throughout their marriage, and “[e]mbryo adoption would appear to violate the language of a woman’s body, because the very mode of self-giving written into her body is subverted as she dissociates pregnancy from marital self-donation.”³⁸

Pacholczyk deepens his argument by situating procreation as neither fertilization alone nor pregnancy alone but essentially both as one unified process. Embryo adoption, for him, cleaves this unified process by treating pregnancy as a separate experience from that of fertilization. In his words—

Procreation in this broad context includes the inscribed intentionality of the conjugal act up to its implied finality at birth, and encompasses all the stages of pregnancy. Pregnancy should not be misconstrued as a kind of superaddition to procreation, an incidental form of nurturing or fostering which happens as a post[-]procreative reality; it is rather an integral and deeply expressive manifestation of human procreation itself.³⁹

He does not believe that the intention to help a child is a legitimate reason to pursue embryo adoption. He refers to the inner order of the conjugal act as one of service. To attempt to introduce life into their lived reality apart from the conjugal act seems to “invoke the manipulative dynamic of masters rather than servants within the delicate procreative arena of marriage, not unlike the dynamic which created the embryos in the first place through IVF.” He admittedly welcomes the children already born of morally illicit means such as embryo adoption but is clear that having children is not the only good that spouses can and must aspire for. In the lack of children—

The proper response here does seem to lie in the hidden and mysterious affirmation that a better state of affairs will always ultimately prevail whenever we choose to pursue the right and the good rather than choosing to violate the moral law, and although certain goods that we might be attracted towards initially will not be ours, other goods of a different and more profound kind will in fact accrue to us.⁴⁰

³⁷ Pacholczyk, “On the Moral Objectionability of Human Embryo Adoption,” 71.

³⁸ Pacholczyk, “On the Moral Objectionability of Human Embryo Adoption,” 73.

³⁹ Pacholczyk, “On the Moral Objectionability of Human Embryo Adoption,” 75.

⁴⁰ Pacholczyk, “On the Moral Objectionability of Human Embryo Adoption,” 81.

Echoing Stempsey, Pacholczyk also worries about the effect that legitimizing embryo adoption would have when the decision-making regarding the production of embryos is left to the IVF clinic. He anticipates that IVF clinics would produce embryos without scruple in the belief that there would be couples who could adopt them. Worse, these IVF clinics might engage in the business of offering cryopreserved embryos for infertile couples. Though, unlike Stempsey, he does not believe that allowing them to thaw and perish by appealing to the ordinary-extraordinary means of treatment distinction is the best moral option since the embryos are not at a point of imminent death. Rather, he suggests that these cryopreserved embryos be allowed to naturally perish over the period that they remain frozen.⁴¹

Christopher Oleson

After the issuance of *Dignitas Personae*, Christopher Oleson describes the mood at the time, “[i]f there is a general consensus regarding *Dignitas [P]ersonae’s* discussion of the rescue of human embryos by means of HET, it is that *Dignitas [P]ersonae’s* treatment of the question is more ambiguous than either side was hoping for [italics added].”⁴² But he believes that “when one takes fully into account what is affirmed in the document, there is no reasonable reading of it which does not ultimately entail that heterologous embryo rescue is morally illicit.”⁴³ Like Pacholczyk, his line of argumentation is that it is flawed logic to justify embryo transfer by appealing to the intention to adopt a child. He points out that *Dignitas Personae* plainly stated that “[t]he proposal that these embryos could be put at the disposal of infertile couples as a treatment for infertility is not ethically acceptable for the same reasons which make artificial heterologous procreation illicit as well as any form of surrogate motherhood” and later on claims that embryo adoption “presents...various problems not dissimilar to those mentioned above.” Based on the wording, Oleson says that if embryo transfer to treat infertility, for artificial heterozygous procreation, and surrogacy motherhood are rejected for their inherent moral problems regardless of intention, then it cannot be said that the intention of embryo transfer to adopt a child is justification enough to pursue embryo adoption. Rather than leaving the issue of embryo adoption open, he suggests that the whole framework of *Dignitas Personae* and the moral principles elucidated therein seem to be against embryo adoption.

⁴¹ This suggestion is impractical for two reasons: The first is that the lifespan of a cryopreserved embryo is indeterminate. There are 20 year old cryopreserved embryos that remain viable. The second is that legal systems often put a limit on the cryopreservation of abandoned embryos, usually 5 years. There is pressure to thaw them before they naturally perish while frozen, whenever that would be.

⁴² Christopher Oleson, “Dignitas Personae and the Question of Heterologous Embryo Transfer,” *The Linacre Quarterly* 76, no. 2 (May 2009): pp. 133-149.

⁴³ Oleson, “Dignitas Personae and the Question of Heterologous Embryo Transfer,” 134.

John S. Grabowski and Christopher Gross

John S. Grabowski and Christopher Gross argue that the document's full take on embryo adoption "is best read not as an absolute condemnation which designates the act as intrinsically evil but as a prudential judgment against the practice in the current circumstances created by the culture of death in many parts of the world."⁴⁴ Concerned with the broad language used in *Dignitas Personae*, they critique Althaus because she "make[s] the distinction between adoptive and biological parenthood ... apart from any theology or definition of parenthood."⁴⁵ They also critique Pacholczyk because he "focus[es] almost exclusively on the physical processes involved in embryo transfer"⁴⁶ and "failed to examine these physical processes within a broader and biblically grounded theology of adoption."⁴⁷ Furthermore, unlike Oleson, Grabowski and Gross do concede some justification underlying the decision to undergo embryo transfer by appealing to the intention to adopt a child. They do so by viewing adoption as a covenant. Through the Old and New Testaments, adoption language has been employed to signify a newly created familial relationship that does not distinguish between biological and adoptive kinship. Citing Stephen Post, they claim that "for early Christians, [traditional] adoption was not merely an act of charity but a logical extension of their own spiritual adoption."⁴⁸ With these in mind, they go beyond the physicalism of the previous arguments and suggest that embryo adoption is morally neutral.

Regardless of its moral neutrality, Grabowski and Gross claim that embryo adoption may be a form of cooperation with the IVF industry. In which case, the moral responsibility is to err on the side of caution by not doing it. Like Stempsey, they are concerned that "[e]mbryo adoption gives the appearance that the Catholic community is collaborating with the fertility industry and harbors no objections to procedures like IVF."⁴⁹ Grabowski's and Gross' line of argumentation is that the prohibition of embryo adoption is "based on a prudential judgment concerning the potential for scandal and cooperation with evil in the present cultural context."⁵⁰ They believe that *Dignitas Personae* takes very seriously the social conditions in

⁴⁴ John S. Grabowski and Christopher Gross, "Dignitas Personae and the Adoption of Frozen Embryos," *The National Catholic Bioethics Quarterly* 10, no. 2 (2010): 307–28. <https://doi.org/10.5840/ncbq201010255>.

⁴⁵ Grabowski and Gross, "Dignitas Personae and the Adoption of Frozen Embryos," 317.

⁴⁶ Grabowski and Gross, "Dignitas Personae and the Adoption of Frozen Embryos," 313.

⁴⁷ Grabowski and Gross, "Dignitas Personae and the Adoption of Frozen Embryos," 313.

⁴⁸ Grabowski and Gross, "Dignitas Personae and the Adoption of Frozen Embryos," 321. (c.f. Stephen G. Post, "Adoption Theologically Considered," *Journal of Religious Ethics* 25.1 (Spring 1997): 152.).

⁴⁹ Grabowski and Gross, "Dignitas Personae and the Adoption of Frozen Embryos," 325.

⁵⁰ Grabowski and Gross, "Dignitas Personae and the Adoption of Frozen Embryos," 318.

which its teachings will be received and so prohibits embryo adoption for the sake of prudence, knowing that its approval may be interpreted to justify other things. They propose as a way out of embryo adoption's potential for scandal and cooperation with evil that "[i]f a government ban were placed on IVF-[Embryo Transfer] and thus the production of excess embryos halted, then embryos could be licitly adopted."⁵¹

Thomas Nelson

Thomas Nelson offers a personalist interpretation of the issue via the philosophical anthropology of John Paul II, who once said that "the personal order is the only proper plane for all debate on matters of sexual morality."⁵² Nelson does this to veer away from the emphasis on the definition of procreation in the previous arguments. He argues that the lack of relatedness between the embryo and the woman whose uterus it will be implanted in renders HET immoral, but not necessarily intrinsically wrong, "because who is transferred into whom is a specifying circumstance of the objective act of transfer and nurturance of the embryo."⁵³ He grounds his interpretation in Richard St. Victor's definition of the human person as "an individual existence of a rational nature."⁵⁴ This existence is fully unique, embodied, and embedded in nature, but not equated to it due to the human person's capacity for a soul. The human person exists not only for himself or herself but in personal relation to others. This personal relatedness should help determine the morality of HET.

Nelson argues that this personal relatedness, experienced through one's embodiment, is determined by one's essential incommunicability, the source of one's unique capacity to be loved.⁵⁵ Essential incommunicability is also determined, to some extent, by one's personal relatedness. We are called to recognize our essential incommunicability only in certain others. For many, the conjugal act is one such avenue. If in the conjugal act both spouses engage their entire embodied persons to "become one flesh," then their personal relatedness to each other receives an added special dimension of exclusivity, and so do their essential incommunicability in that respect. At the same time, the more their essential incommunicability is particularized towards each other in the conjugal act, then the more their personal relatedness is particularized into a single interpersonal relationship. Thus, both personal relatedness

⁵¹ Grabowski and Gross, "Dignitas Personae and the Adoption of Frozen Embryos," 327.

⁵² Thomas K. Nelson, "Personhood and Embryo Adoption." *The Linacre Quarterly* 79, no. 3 (2012): 261–74. <https://doi.org/10.1179/002436312804872767>.

⁵³ Nelson, "Personhood and Embryo Adoption," 263. (see: Karol Wojtyła, *Love and Responsibility*, rev. ed. (1960; New York: Farrar, Strauss and Giroux, 1981), 18).

⁵⁴ Nelson, "Personhood and Embryo Adoption," 264.

⁵⁵ See: John F. Crosby, *The Selfhood of the Human Person* (Washington, D.C.: Catholic University of America Press, 1986), 59.

and essential incommunicability determine each other in the conjugal act. As a result, the spouses enter into an exclusive interpersonal incommunicable relationship. This type of relationship, according to Nelson, applies to the mother and her embryo. Mirroring the conjugal act of wife and husband, the relationship between the mother and her embryo in pregnancy is also an exclusive interpersonal incommunicable relationship by the fact that they are already “one flesh.” In other words, on the level of personhood, the relationship between a mother and her embryo is rightly their own, and not to be infringed by a third party. Embryo adoption from this personalist interpretation is intrinsically immoral because “the bodies involved express unique persons who are not meant for the total embodied union of pregnancy.”⁵⁶ Following Nelson’s logic, an implication would be that it might not be intrinsically immoral if the mother receives her embryos, not anymore in formal cooperation with IVF but as a new act to rescue them from a limbo-like situation since this would be within the exclusive interpersonal incommunicable relationship between herself and her embryos. Nelson defers regarding its moral liceity by cautioning against the risks of scandal and material cooperation with the IVF industry.

Charles Robertson

Charles Robertson enriches the debate by applying a Thomistic analysis to the issue.⁵⁷ He claims that—

The Congregation for the Doctrine of the Faith, in its instruction *Donum vitae*, made the judgment that heterologous artificial fertilization and embryo transfer “clearly contradict the unity of matrimony, the dignity of the spouses, the proper vocation of the parents as well as the right of the child with a view to which it should both be conceived and brought forth in marriage and through marriage.”⁵⁸

According to Robertson, the end of embryo transfer, whether for adoptive purposes or not, is to produce a child but to do so a woman must use her generative faculty as means to that end. In Thomism, for an end to be justly pursued, its means must conform to the order of reason as manifested in natural law. He explains that—

[T]he fundamental question that determines whether embryo transfer is licit is whether it constitutes a licit use of the generative faculty, which is not determined only in terms of whether it is in fact fulfilling its natural and proper teleological functions. Even though the woman’s generative faculty is constituted such that it can nourish a developing embryo, it makes no

⁵⁶ Nelson, “Personhood and Embryo Adoption,” 269.

⁵⁷ Robertson, Charles. “A Thomistic Analysis of Embryo Adoption.” *The National Catholic Bioethics Quarterly* 14, no. 4 (2014): 673–95. <https://doi.org/https://doi.org/10.5840/ncbq201414470>.

⁵⁸ Robertson, “A Thomistic Analysis of Embryo Adoption,” 673.

small difference, from the standpoint of ethics, how the embryo got there in the first place.⁵⁹

It is true that the gestation of an embryo, regardless of its origin, aligns with the teleological function of the generative faculty of a woman but in the order of reason, the proper object of the generative faculty of a woman is the generative faculty of a man and vice versa. In transferring an embryo into her uterus, the woman violates this order of reason by subjecting her generative faculty to a technique instead of complementing it with those of a man. Human beings by their nature and reason form long-term bonds with each other to successfully rear their offspring. These bonds are sanctified by matrimony. But the woman in subjecting her generative faculty to technique and the man in standing-by further violate the order of reason proper to the generative faculty by depriving themselves of their exclusive right to each other. In short, any impregnation must be the direct fruit of marriage. So serious are the violations wrought that Robertson notes Aquinas' chapter 122 of book 3 of his *Summa contra gentiles* as placing violations of the generative faculty after that of homicide. The woman and man violate the order of reason proper to the generative faculty and they also offend the common good of the species by refusing to conform to the intrinsic good of all creation, which in turn, proceeds from the common good of the universe, namely, God. By violating the order of reason proper to the generative faculty through embryo transfer, one ultimately refuses to render God his due by respecting the order God has willed.

Robertson shares Pacholczyk's point that procreation must include conception, gestation, and birth.⁶⁰ He disagrees with those who believe that procreation ends in conception. In terms of transferring an embryo into a woman's uterus to receive nutrition, embryo adoption advocates tend to categorize embryo adoption on the same level as wet nursing. However, Robertson argues that "for St. Thomas, conception does not refer exclusively to the 'punctual moment' of the absolute becoming of a substance but includes the entire time in which the generated is within the confines of the generator, thus reflecting the etymological meaning of the term [*conception*] as something 'received or taken within.'"⁶¹ Therefore, unlike wet nursing, gestation and birth are generative or procreative acts. Given that procreation underlies the order of reason proper to the generative faculty, not to mention the order of morals proper to marriage, then to only gestate and birth apart from conception is to violate this order of reason and order of morals. Robertson concludes—

⁵⁹ Robertson. "A Thomistic Analysis of Embryo Adoption," 695.

⁶⁰ Charles Robertson, "Generation, Gestation, and Birth: An Important Element in the Embryo Adoption Debate." *The Linacre Quarterly* 85, no. 1 (March 28, 2018): 35–48. <https://doi.org/https://doi.org/10.1177/0024363918756388>.

⁶¹ Robertson, "Generation, Gestation, and Birth: An Important Element in the Embryo Adoption Debate," 39.

[I]t should be clear that if we follow the thought of St. Thomas, there is no warrant in the law of nature for the use of the uterus involved in embryo transfer, whether that transfer is taken with a view to rescue or with a view to adoption. To the contrary, such a use violates the order of reason that governs the use of our generative organs. Those organs are rightly ordered to their end by means of being ordered to the generative activity of one's spouse.⁶²

Arguments in Favor of Embryo Adoption

Christopher Tollefsen

Christopher Tollefsen, writing during the same period as Stempsey, Althaus, and Pacholczyk, argues for an alternative moral viewpoint compared to those of the three authors.⁶³ He points out that the unitive aspect of the conjugal act is in the sexual intercourse itself. It is only during sexual intercourse that the unitive aspect becomes significant regardless of whether a pregnancy is achieved or not, assuming that there was no contraception or abortifacient used. In other words, impregnation as a result of sexual intercourse is not part of the unitive aspect of the conjugal act, which is already completed upon withdrawal of the male genitalia from that of the female. Consequently, disagreeing with Althaus and Pacholczyk, Tollefsen believes that “procreation, insofar as it is the fruit of mutual self-donation and not to be separated from that self-donation, does not include, or extend to, the stages of pregnancy consequent upon the generation of a child.” He asserts that—

[I]f “procreation,” insofar as it is relevant to the successful performance of the marital act does not, conceptually, biologically, or otherwise, include pregnancy as a part of it, then neither does the attempt to achieve pregnancy apart from marital sexual union violate the normatively necessary connection between marital intercourse and procreation.⁶⁴

If we are to accept that the unitive and procreative aspects are completed after the conjugal act, then impregnation, gestation, and nurturing of the embryo are of a distinct order of marital good. There is no discontinuity in moral responsibility between the spouses but that the obligations involved are changed from performing the conjugal act to nurturing the embryo. Because impregnation, gestation, and nurturing are of a distinct order of marital good from the conjugal act, then for a woman to receive an embryo does not violate the marital good of the conjugal act

⁶² Robertson, “Generation, Gestation, and Birth: An Important Element in the Embryo Adoption Debate,” 43-44.

⁶³ Christopher Tollefsen, “Could Human Embryo Transfer Be Intrinsically Immoral?,” in *The Ethics of Embryo Adoption and the Catholic Tradition Moral Arguments, Economic Reality and Social Analysis* (New York, NY: Springer, 2007), pp. 85-102.

⁶⁴ Tollefsen, “Could Human Embryo Transfer Be Intrinsically Immoral?,” 90.

with her husband. Tollefsen, thus, argues that embryo transfer is not intrinsically immoral, *malum in se*. Moreover, he lauds the specific decision to undergo embryo transfer for adoption. He agrees with *Donum Vitae's* words that every child has the right to be “conceived, carried in the womb, brought into the world, and brought up within marriage.” But he states that there is no prescription provided if the genetic parents themselves forfeit their parental duty to fulfill those rights. He does not distinguish the goods obtained by the family between the adoptive setting and the natural setting.

Writing after the issuance of *Dignitas Personae*, Tollefsen reaffirms his support for embryo adoption.⁶⁵ He argues that human adoption must reflect divine adoption in four ways. Firstly, it is gratuitous. Human adoption must not be undertaken because one wants a child to fulfill some psychological need. It must be a product and sharing of the mutual love of the spouses. Secondly, it is a response to God’s call. Human adoption must be a continuous active commitment to form and be formed by both the adopter and adoptee. Thirdly, it reconciles identities. Human adoption must challenge the adopter and adoptee to harmonize the cultural identities in place just as divine adoption challenges us to harmonize our divine and worldly identities. Fourthly, it is salvific. Human adoption must be salvific by rescuing the child from a condition of being without family. Regarding embryo adoption, Tollefsen states that it—

[W]ould need to be a practice pursued by married couples as an expression and realization of their marital love, in which the offer of a family is freely made to the child, to be accepted or rejected, and in which not only does the child enter into the parental family unit, but the parents too take on a share of the child’s previous familial reality.⁶⁶

He contends that when *Dignitas Personae* disapproves of “[t]he proposal that these embryos could be put at the disposal of infertile couples as a treatment for infertility,” it is because the four ways above are not fulfilled. Additionally, Tollefsen suggests that *Dignitas Personae* does not reject embryo adoption as advocated by its proponents. He points out that embryo adoption is cautioned upon when done “solely in order to allow human beings to be born who are otherwise condemned to destruction.” Tollefsen interprets *Dignitas Personae* as commenting on embryo adoption based only on this qualified motivation. It does not consider the broader motivation of couples to adopt a child as one’s own to share in their love, which may morally justify the act.

⁶⁵ Christopher Tollefsen, “Divine, Human, and Embryo Adoption,” *The National Catholic Bioethics Quarterly* 10, no. 1 (2010): pp. 75-85, <https://doi.org/https://doi.org/10.5840/ncbq201010173>.

⁶⁶ Tollefsen, “Divine, Human, and Embryo Adoption,” 84.

Brandon P. Brown and Jason T. Eberl

Brandon P. Brown and Jason T. Eberl both argue from the standpoint of respect and defense of life in favor of embryo adoption.⁶⁷ They refute Stempsey's suggestion to thaw the embryos and allow them to perish as contrary to *Donum Vitae* which stated that "[i]t is therefore not in conformity with the moral law deliberately to expose to death human embryos obtained in vitro." They note that it was about scientific experimentation, but it is reasonable, they argue, to believe that it extends to other ways that expose them to death. They also refute Althaus' lack of action in regards to the cryopreserved embryos as essentially a condemnation to death since these embryos will ultimately perish over an uncertain period. They point out that *Donum Vitae* laments cryopreservation as an unacceptable situation. And although not mentioned by name, they refute Grabowski's and Gross' line of argumentation by arguing that there is no inherent proximate mediate cooperation with the IVF industry but mere association. They analogously compare embryo adoption with traditional adoption; the adoptive parents in the latter do not cooperate with the circumstances that lead to the abandonment of the child. Unless the couple seeking embryo adoption explicitly requests and approves of the screening of potential embryos, wherein weak ones are destroyed, then they do not formally cooperate with the IVF industry. They cite Germain Grisez as suggesting that embryo adoption would have the IVF industry cooperating with the adoptive parents in treating the embryo as a child rather than mere biological material.

Regarding the potential for scandal, both Brown and Eberl refer to Thomas Aquinas, who distinguishes between active scandal and passive scandal. In an active scandal, Aquinas categorizes those who "by his evil word or deed intends to induce another to sin; or, if he does not so intend, when the deed is such that by its nature it is an inducement to sin; for example, someone publicly commits a sin or something that has a resemblance to sin."⁶⁸ In a passive scandal, Aquinas includes occasions "when it is outside of the agent's intention, and outside the nature of the action, and yet someone who is disposed toward evil is induced to sin."⁶⁹ Active scandal is always morally wrong but passive scandal may or may not be depending on the goodness of the word or deed that would induce sin.⁷⁰ In embryo adoption, there can be no scandal concerning the IVF process since it already occurred. As for future occasions

⁶⁷ Brandon P. Brown and Jason T. Eberl, "Ethical Considerations in Defense of Embryo Adoption," in *The Ethics of Embryo Adoption and the Catholic Tradition Moral Arguments, Economic Reality and Social Analysis* (New York, NY: Springer, 2007), pp. 103-118.

⁶⁸ Brown and Eberl, "Ethical Considerations in Defense of Embryo Adoption," 114. (See: Aquinas, 1882a, ST, IIa-IIae.43.1 ad 4, trans. Eberl).

⁶⁹ Brown and Eberl, "Ethical Considerations in Defense of Embryo Adoption," 114. (See: Aquinas, 1882a, ST, IIa-IIae.43.1 ad 4, trans. Eberl).

⁷⁰ See: Aquinas, 1882a, ST, IIa-IIae.43.2.

of IVF, for as long as the couple seeking embryo adoption morally rejects the IVF industry then what occurs is a passive scandal. Brown and Eberl believe that there is “a positive duty not to allow cryopreserved embryos to be destroyed, for research or any other purpose, if we can do something to prevent it.”⁷¹ Even if this duty is not absolute, it is there nonetheless. For them, embryo adoption is morally licit “when the inestimable good of the life that is saved legitimizes any unsavory *proximity* to these institutions, so long as formal cooperation and active scandal [are] avoided [original italics].”⁷²

Sarah-Vaughan Brakman

Sarah-Vaughan Brakman argues in favor of embryo adoption by basing it on the Christian notion of good stewardship.⁷³ She lays down the premise that the adoptive family setting, whether traditional or embryonic, is in no way inferior to the natural family setting. She critiques Althaus and Pacholczyk for offering no proof that adoptive parenthood is in any way less real than biological parenthood. She cites John Paul II for saying that—

Adopting children, regarding and treating them as one’s own children, means recognizing that the relationship between parents and children is not measured only by genetic standards. Procreative love is first and foremost a gift of self. There is a form of “procreation” which occurs through acceptance, concern and devotion. The resulting relationship is so intimate and enduring that it is in no way inferior to one based on a biological connection.⁷⁴

Simply asking adopted children about who their real mothers are would reveal that “real” motherhood is experiential. The notion that spouses can only be mother and father through the conjugal act “is unsupported by both Catholic doctrine and tradition.”⁷⁵ Brakman elaborates on her argument based on the Christian notion of good stewardship. As created beings in the image of God, humans are stewards unto themselves, unto each other, and creation. Drawing from the Parable of the Three Stewards, she believes that good stewardship entails fidelity, trustworthiness, risk, creativity, and courage. All of which are exercised in the decision to adopt an embryo. The Parable of the Good Samaritan further teaches that good stewardship entails solidarity and charity. As victims of the IVF industry, cryopreserved embryos are

⁷¹ Brown and Eberl, “Ethical Considerations in Defense of Embryo Adoption,” 106.

⁷² Brown and Eberl, “Ethical Considerations in Defense of Embryo Adoption,” 117.

⁷³ Sarah-Vaughan Brakman, “Real Mothers and Good Stewards: The Ethics of Embryo Adoption,” in *The Ethics of Embryo Adoption and the Catholic Tradition Moral Arguments, Economic Reality and Social Analysis* (New York, NY: Springer, 2007), pp. 119-140.

⁷⁴ Brakman, “*Real Mothers and Good Stewards: The Ethics of Embryo Adoption*,” 123.

⁷⁵ Brakman, “*Real Mothers and Good Stewards: The Ethics of Embryo Adoption*,” 124.

akin to the injured man on the road who seeks help but was rejected by those it was nationally related to and found help in a foreigner. Similarly, embryo adoption involves biological foreigners helping embryos rejected by those they are biologically related to.

It would be better if the biological parents take responsibility for their embryos and reject the IVF industry. But couples interested in adopting the embryos under the Christian notion of good stewardship should not be prevented from doing so. Elaborating further on the Christian notion of good stewardship, Brakman acknowledges that the decision to adopt an embryo is not ideal in a morally perfect world yet with the right intention and disposition it is an exercise of stewardship over one's body to extend compassion to another (i.e. the embryo). In short, Brakman holds the view "that embryo adoption in the right circumstances and with the proper virtues may be fulfilling the charge to be the good steward."⁷⁶ It could also be a fulfillment of the spirit of the beatitudes.

Stephen Napier

Stephen Napier directly responds to Oleson's belief that "there is no reasonable reading of [Dignitas Personae] which does not ultimately entail that heterologous embryo rescue is morally illicit."⁷⁷ Oleson's basic premise is that since embryo transfer for treating infertility is intrinsically immoral regardless of intention, therefore embryo transfer for adoption must be intrinsically immoral under the same action. In response, Napier highlights the fact since abortion advocates require a high level of justifiability given the stake of innocent human lives, then embryo adoption critics require the same high level of justifiability since the stakes are the same. Napier argues that they do not live up to that level.

Napier asserts that embryo transfer for treating infertility is an entirely different moral act from embryo adoption. He explains that the former is opposed because it is an extension of IVF, which "violates the rights of the child; it deprives him of his filial relationship with parental origins and can hinder the maturing of his personal dignity." Furthermore, he raises the curious instance of *Dignitas Personae* recommending traditional adoption for infertile couples precisely for its intention, which is the same as embryo adoption. Based on Napier's reading of *Dignitas Personae*, there is a moral difference between embryo transfer for treating infertility and embryo adoption but there is none between traditional adoption and embryo adoption. He offers the analogous situation of withdrawing disproportionate means

⁷⁶ Brakman, "Real Mothers and Good Stewards: The Ethics of Embryo Adoption," 135.

⁷⁷ Stephen Napier, "Moral Justification and Human Acts: A Reply to Christopher Oleson," *The Linacre Quarterly* 76, no. 2 (May 2009): pp. 150-162.

of treatment for the intention to euthanize the patient and withdrawing the same disproportionate means of treatment for the intention of respecting the wishes of the patient. Strengthening his argument, Napier cites *Dignitas Personae* as disapproving of embryo adoption because it “presents however various problems not dissimilar to those mentioned above.” Oleson reads this as referring to the moral problems of embryo transfer for treating infertility, which in turn is because of its relation to IVF. However, Napier notes that the preceding paragraph regarding embryo transfer for treating infertility ends with the phrase “this practice would also lead to other problems of a medical, psychological and legal nature.” In his reading, embryo adoption does not possess moral problems just medical, psychological, and legal ones, none of which by themselves necessitates that it is morally illicit but all of which the faithful need to be aware of.

After directly responding to Oleson’s belief, Napier argues in favor of embryo adoption by treating it on the grounds of *reductio ad absurdum*. Assuming that embryo adoption is intrinsically morally illicit, then if technology would permit the artificial gestation of the embryos, critics would have to concede that a womb is preferable because it is safer and natural, thawing and allowing them to perish being repugnant for being fundamentally discriminatory against embryos conceived outside the womb. If these critics would propose that the womb of the biological mother is the only moral option, then they would concede that the intention to transfer the embryos is morally licit. Yet the only difference between the biological mother and adoptive mother in transferring the embryos is genetics, which by itself is not a moral ground to prevent its gestation. In the end, embryo adoption is morally licit based on Napier’s reading of *Dignitas Personae* and his argument of *reductio ad absurdum*.

Kent Lasnoski

Kent Lasnoski uses scripture and tradition to support embryo adoption.⁷⁸ He observes that moral-philosophical/theological approaches have dominated the embryo adoption debate with scant use of scripture and practically no reference to tradition. His arguments hope to ameliorate these deficiencies. His starting point is the annunciation, which he is not the first to discuss. He acknowledges others who have touched upon it in the context of embryo adoption.⁷⁹ Nevertheless, he argues that they all mischaracterize the event in one way or another. For him, Mary’s fiat is a sign of fecundity to

⁷⁸ Kent Lasnoski, “Setting the Captives Free: Precedent for Embryo Adoption in Scripture and Tradition?,” *Josephinum Journal of Theology* 20, no. 1 (2013): pp. 88-112.

⁷⁹ He cites Catherine Althaus, Mary Geach, John Finnis, Christopher Kaczor, and John Stanmeyer.

the will of God outside of the conjugal act, as per St Augustine, who spoke of her obedience as that which bears Christ into the world.⁸⁰ And just as the impregnation of Mary humanizes an already existing person (i.e. the Word), so it can be likened to a woman adopting an embryo whose impregnation in the process further humanizes an already existing human being (i.e. the embryo). Moving forward to Christ's proclamations, Lasnoski refers to Luke 4:18-19 wherein Jesus cites Isaiah's words of "He has sent me to proclaim release to the captives, recovery of sight to the blind, to set at liberty those who are oppressed, to proclaim the acceptable year of the Lord." In doing so, he takes it as intuitively obvious given that cryopreserved embryos are "in fact captives, prisoners, oppressed persons." In this light, embryo adoption is not only a question of sexual ethics but also a matter of justice for the oppressed. Building on his last point, Lasnoski speaks of the long tradition in the Church to ransom captives, especially by the Mercedarian and Trinitarian religious orders in the medieval period. Ransoming captives was not always effective nor did it fully respond to the prevalence of captivity, but the laudable evangelical spirit behind it can be a source of inspiration for embryo adoption. Far from being seen as a monetary incentive for the captors, it was praised as a concrete manifestation of the beatitudes. In much the same way, whatever benefit the IVF industry may derive in the process of embryo adoption must not be seen as the primary consideration in the face of the lives saved, however few. Taken together, Lasnoski believes that scripture and tradition support embryo adoption.

Elizabeth Rex

Elizabeth Rex responds to Robertson by first contesting his claim to analyze embryo adoption.⁸¹ Her review of his arguments reveals that he critiques embryo transfer without any consideration of adoption. She questions Robertson's critique of embryo transfer as a violation of the generative faculty of the woman by arguing that embryo transfer and embryo adoption are not generative acts. Moreover, it is the biological parents who have violated the order of reason proper to the generative faculty, not the adoptive parents who try "to *restore* the natural generative order that has already been gravely violated and interrupted by the biological parents who chose to disregard the Church's teaching regarding the immorality of IVF [original italics]."⁸² More evident

⁸⁰ See: Augustine *De Sancta Virginitate* no. 3 trans. P.G. Walsh *De Bono Coniugali: De Sancta Virginitate* (Oxford: Clarendon, 2001) 69.

⁸¹ Elizabeth Bothamley Rex, "The Magisterial Liceity of Embryo Transfer," *The National Catholic Bioethics Quarterly* 15, no. 4 (2015): pp. 701-722, <https://doi.org/10.5840/ncbq201515471>.

⁸² Rex, "The Magisterial Liceity of Embryo Transfer," 78.

of Robertson's faulty argument, according to Rex, is his mistranslation of a quotation from *Donum Vitae*. Rex states that Robertson wrongly implied that "embryo transfer" was included in the document's opposition to heterologous artificial fertilization, and mistranslated the singular Latin verb *contradicit* into the plural to falsely give the impression that *Donum Vitae* opposes both, when in fact it only does so for heterologous artificial fertilization. It must be remembered that Robertson wrote "The Congregation for the Doctrine of the Faith, in its instruction *Donum vitae*, made the judgment that heterologous artificial fertilization and embryo transfer 'clearly contradict the unity of matrimony.'" In doing so, Rex claims that "Robertson fails to distinguish that embryo transfer and embryo adoption are acts that are distinct from the intrinsically immoral acts of both heterologous and homologous artificial fertilization."⁸³ As for his use of Thomism, Rex is suspicious of it. She argues that the whole animating spirit of Thomistic philosophy is charity. The decision to pursue embryo adoption is a charitable one if it is done to share with the child the mutual love of the spouses. Unless there is a blatant contravention of the moral law, which is unclear in embryo adoption hence the debate, then charity must ultimately prevail.

Rex also suggests that embryo transfer is considered morally licit by *Donum Vitae* if one treats it as a medical therapeutic intervention. As found in *Donum Vitae*, "one must uphold as licit procedures carried out on the human embryo which respect the life and integrity of the embryo and do not involve disproportionate risks for it but are directed towards its healing, the improvement of its condition of health, or its individual survival."⁸⁴ For Rex, embryo adoption is undertaken with these criteria in mind and thus must be morally licit. She also cites the Catechism of the Catholic Church n. 2273-2275 as further evidence of the positive duty to ensure the health of the embryo.⁸⁵ When one takes these excerpts together, they help clarify what *Dignitas Personae*

⁸³ Rex, "The Magisterial Liceity of Embryo Transfer," 82.

⁸⁴ *Donum Vitae*, 3.

⁸⁵ The inalienable rights of the person must be recognized and respected by civil society and the political authority. These human rights depend neither on single individuals nor on parents; nor do they represent a concession made by society and the state; they belong to human nature and are inherent in the person by virtue of the creative act from which the person took his origin. Among such fundamental rights one should mention in this regard every human being's right to life and physical integrity from the moment of conception until death (n. 2273) .

Since it must be treated from conception as a person, the embryo must be defended in its integrity, cared for, and healed, as far as possible, like any other human being (n. 2274).

One must hold as licit procedures carried out on the human embryo which respect the life and integrity of the embryo and do not involve disproportionate risks for it, but are directed toward its healing, the improvement of its condition of health, or its individual survival (n. 2275).

intends. By reading *Dignitas Personae* with *Donum Vitae* and the Catechism of the Catholic Church, then one comes to an understanding of embryo adoption as morally licit.

Conclusion

There is much to think about regarding the arguments which are not in favor of embryo adoption, but I find the ones in favor of it more persuasive. I want to draw attention to the fact that *Dignitas Personae* states that “it needs to be recognized that the thousands of abandoned embryos represent a *situation of injustice which in fact cannot be resolved* [original italics].”⁸⁶ I argue that this excerpt of *Dignitas Personae* does not exclude embryo adoption. “Abandoned” refers to those cryopreserved embryos whose parents cannot be contacted. It would be ethically problematic to do anything with the embryos without their parents’ consent. Hence, their situation of injustice cannot be resolved. But for many other cryopreserved embryos, their parents can be contacted. They just do not desire the embryos. The parents must carefully consider their embryos’ right to life in deciding on what to do with them. No one is looking for a perfect solution, only a morally licit one. As a technical procedure, embryo adoption, admittedly, is fraught with risks for the embryos. As noted, 50% survive the thawing process, and not all of them fully gestate. And even if these risks are reduced, most of the hundreds of thousands of cryopreserved embryos would not be selected for embryo adoption. But despite the risks, embryo adoption seems to be the only morally licit option that gives the embryos a chance at life. The other proposed options are to keep them cryopreserved or to thaw them, both of which entail certain death for all the embryos with the difference being only in when.

As I see it, the issues of the debate can be framed in the following way: If the woman who resorted to IVF resulting in cryopreserved embryos later regrets her cooperation with the IVF industry, can she still morally have her embryos implanted in her uterus? If she cannot, then this precludes embryo adoption since if the biological mother cannot receive her embryos, neither can another woman. But if she can, then embryo transfer is not intrinsically immoral. We must now ask, is there a moral difference between the biological mother and another woman in terms of embryo transfer, especially if the former refuses her embryos? If there is a moral difference, is it more fundamental than the embryo’s right to life? But if there is no moral difference, then embryo adoption is morally licit. Given its hesitancy to directly address embryo adoption, I suggest that the CDF clarify two things: whether procreation ends with the conjugal act or extends to pregnancy, and whether thawing the embryos to perish is morally licit? Answers to these would provide much-needed

⁸⁶ *Dignitas Personae*, 19

clarity. But until the CDF adjudicates the issue, I encourage the Church to continue the embryo adoption debate to articulate more the precise application of the moral principles and values therein to better navigate through this moral impasse, and so that, in the meantime, those who choose to either pursue or refuse embryo adoption have more grounds for informed consciences.^{PS}

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