

Is Artificial Impregnation Opposed to the Unity of Marriage?: A New Look at the Question of Embryo Adoption

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THE QUESTION OF EMBRYO ADOPTION is one of the most difficult and most nuanced questions in all of bioethics. The difficulty of the question lies not only in the grave reality that the lives of more than 400,000 cryopreserved embryos are at stake but also in the fact that the technological procedures used by the in vitro fertilization (IVF) industry have created an ethical situation that has never before existed in the history of the human race. No Father or Doctor of the Church in centuries prior could have anticipated the kind of medical technology available today and, thus, commented on such a unique moral situation. Both the weight of the question for these tiny orphaned persons and the novelty and absurdity of their current state make the evaluation of embryo adoption extraordinarily difficult. Even the 2008 Congregation for the Doctrine of the Faith (CDF) document *Dignitatis Personae*, which treats the issue explicitly, does not give a definitive solution to the moral issue. *Dignitatis Personae* states that there are “problems” with embryo adoption similar to those with IVF, surrogacy, and the transfer of embryos for infertile couples as a “treatment for infertility,” all of which the CDF condemns as “not ethically acceptable” because they are opposed to the unity of marriage.¹ Nevertheless embryo adoption

¹ Congregation for the Doctrine of Faith [CDF], *Dignitatis Personae* (September 8, 2008), §19. The final remarks in *Dignitatis Personae* on the issue of embryo adoption are striking. The CDF notes that the current status of the thousands

itself is not formally condemned as illicit. The judgment in *Dignitatis Personae* leans in a negative direction but does not make a definitive pronouncement either way. While much of *Donum Vitae* and *Dignitatis Personae* is aimed at addressing the immorality of artificial fertilization, the main issue surrounding embryo adoption is whether or not artificial impregnation is morally licit.

Moral theologians themselves are currently divided on the issue. Those in favor of embryo adoption do not find artificial impregnation—that is, heterologous embryo transfer (HET)—to be morally problematic but may have concern with the proximity of the couple's cooperation with the IVF industry.² These proponents of embryo adoption do not see any moral difficulty in what is considered a clinical act of transferring of an embryo into the womb of a married woman to impregnate her if it is the couple's intention to adopt the

of orphaned embryos represents “a situation of injustice which in fact cannot be resolved.” Furthermore, the text cites Pope John Paul II, who calls for an immediate halt of the IVF procedures that are causing this grave moral situation, noting that “there seems to be no morally licit solution.” Thus, the judgment of the CDF on embryo adoption is overall a negative one. By “negative judgment,” I am arguing that the text does not *in any way* state that embryo adoption is a licit practice and that married couples should go ahead and gestationally adopt these embryos, but rather suggests serious reservations, alludes to “problems,” and even states explicitly that this situation “*in fact* cannot be resolved” or repaired, *even though* embryo adoption as a solution had been proposed to the CDF and there are many generous couples who would potentially volunteer. Thus, by “negative judgment,” I am stating specifically (1) that *Dignitatis Personae* is fundamentally *not* neutral in its evaluation of embryo adoption, but leans far more in the direction of saying “no” to the idea, but also that (2) it does not formally condemn the practice as “illicit” as it did other artificial reproductive procedures. The judgment is clearly negative, albeit not definitive.

² See Edward Furton, “Embryo Adoption Reconsidered,” *National Catholic Bioethics Quarterly* 10, no. 2 (Summer 2010): 329–47. See also: E. Christian Brugger, “In Defense of Transferring Heterologous Embryos,” *National Catholic Bioethics Quarterly* 5, no. 1 (Spring 2005): 95–112; Elizabeth Rex, “IVF, Embryo Adoption and Embryo Transfer,” *National Catholic Bioethics Quarterly* 14, no. 2 (Summer 2014): 227–37; 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*, ed. Sarah-Vaughan Brakman et al., Philosophy & Medicine: Catholic Studies in Bioethics 6 (New York: Springer, 2007), 94. John S. Grabowski and Christopher Gross, “*Dignitas personae* and the Adoption of Frozen Embryos: A New Chill Factor?” *National Catholic Bioethics Quarterly* 10, no. 2 (Summer 2010): 313–28.

child into their family. They consider it a life-saving act, one that perhaps even restores the order of nature by placing the child where he or she ought to be—gestating in the womb of a loving mother married to a man who also adopts the child as his own. On the surface this argument seems very fitting and reasonable. Most opponents of embryo adoption, however, argue that, while the intention is profoundly noble and praiseworthy, there is a fundamental moral problem in the very act of embryo transfer, since the woman becomes pregnant by a person who is not her husband and this action violates the unity of marriage, which *Donum Vitae* states involves “the right to become a mother and father *only* through each other.”³

To complicate the matters even further, proponents of embryo adoption absolutely agree with the text of *Donum Vitae* II.A.1, but they do not see why its logic applies to embryo adoption, since that section of *Donum Vitae* deals with the dignity of procreation—namely, how procreation *ought* to happen in the first place. Yet, since conception has already occurred and the injustice already taken place to the embryo, proponents of embryo adoption generally do not find these passages to be essentially related to the issue.⁴ Nor do they

³ CDF, *Donum Vitae* (February 22, 1987), II.A.1. See Tracy Jamison, “Embryo Adoption and the Design of Human Nature,” *National Catholic Bioethics Quarterly* 10, no. 1 (Spring 2010): 111–22. See also Charles Robertson, “A Thomistic Analysis of Embryo Adoption,” *National Catholic Bioethics Quarterly* 14, no. 4 (Winter 2014): 673–95. Robertson argues that embryo transfer, which is required for embryo adoption, is a wrongful use of the generative faculty. It is a sexual sin, albeit not a sin of lust. See also: Mary Geach, “The Female Act of Allowing an Intromission of an Impregnating Kind,” in *Human Embryo Adoption: Biotechnology, Marriage, and the Right to Life*, ed. Thomas Berg and Edward J. Furton (Philadelphia, PA / Thornwood, NY: National Catholic Bioethics Center / Westchester Institute for Ethics and the Human Person, 2006), 251–71, at 269, and Tadeusz Pacholczyk, “Some Moral Contraindications to Embryo Adoption,” in Berg and Furton, *Human Embryo Adoption*, 37–53.

⁴ Furton comments on *Donum Vitae*, II.A.1, on the right of the spouses to become father and mother only through each other that: “All this is true, but irrelevant. The couple who adopt an embryo do not become father and mother to the adoptee, and that is the tragedy of the matter. The embryo already has a father and a mother, but they have abandoned the child. So although it is true to say that this child was not brought into being through the reciprocal love of the parents but by the skill of a laboratory technician, that immorality is the fault of the true parents, not the adoptive couple. The argument offered might apply equally well to a couple who adopt a born child. Neither do they become the true parents of this child. They enter the picture after the fact” (“Embryo Adoption Reconsidered,” 336).

understand why opponents of embryo adoption continue to focus on this one aspect of the biological process required to make embryo adoption occur when there does not seem to be another morally licit solution. How *exactly* does artificial impregnation violate the unity of marriage, as opponents so often argue? Why do opponents make such a big deal over moving an embryo imprisoned in a freezer to the womb of a woman who will gestate and nurture the child through birth and raise the child together with her husband?

Moral theologians both for and against embryo adoption are at an impasse with respect to how the CDF's moral reasoning on artificial *fertilization* applies to the new issue of artificial *impregnation*. Opponents of embryo adoption will continue to appeal to these aforementioned texts in order to support a negative judgment on artificial impregnation as opposed to the unity of marriage, while proponents of embryo adoption continue to state that they absolutely agree with these texts on the dignity of procreation but that they are not immediately relevant to the question because conception *in vitro* has *already occurred*, and everyone involved in the disputed question agrees that it should not have occurred in this manner.

In order to advance the conversation on this issue, I believe it is necessary to get “underneath,” so to speak, the texts of *Donum Vitae* and *Dignitatis Personae* in order to draw out anew the reasoning behind them. Neither side of the debate has explicitly articulated the underlying unity between artificial fertilization and artificial impregnation. In order to see the moral coherence that *both* are illicit, it is necessary to grasp with clarity the moral logic of the former at its root and then see how it applies to the latter. I argue that, when the magisterium made definitive pronouncements on artificial fertilization—IVF, artificial insemination, and surrogacy—the logical consistency of their thinking was rooted in what I call “conjugal agency”—the reality that sound moral thinking about sexual morality and reproductive bioethics consists in (1) recognizing the dignity of spouses in being the *agent cause* of new life and of pregnancy and (2) this agency taking place through the marital act. The reason that both of these are important is that they correspond to the causal order that God himself has written into the fabric of nature, thereby establishing right relationships within the family whereby the dignity of all members are preserved. In this article, I will demonstrate how the CDF employed this line of reasoning in arriving at the judgments they did concerning IVF, artificial insemination, and surrogacy, and then I will apply

the same line of reasoning to the issue of embryo adoption. It is my contention that understanding the moral importance of conjugal agency leads to the conclusion that artificial impregnation is, by its very nature, opposed to the unity of marriage because it transfers the *agency* of impregnation that is proper to the spouses and exclusive to their union to another person. For this reason, both heterologous and homologous embryo transfer are opposed to the unity of marriage and are intrinsically immoral.

**Conjugal Agency as the Root of Reproductive
Bioethics: Understanding the Logic of *Donum Vitae* and
Dignitatis Personae on Artificial Fertilization**

While *Donum Vitae* and *Dignitatis Personae* do condemn many artificial reproductive technologies currently in use as illicit, it is important to remember that the use of artificial technology in the area of human sexuality and reproduction is not something fundamentally immoral. *Dignitatis Personae* states: “Techniques which assist procreation are not to be rejected on the grounds that they are artificial. As such they bear witness to the possibilities of the art of medicine. But they must be given a moral evaluation in reference to the dignity of the human person who is called to realize his vocation from God and to the gift of love and the gift of life.”⁵ Therefore, even in the area of human sexuality and procreation, there are right uses of artificial techniques and intervention and there are also wrongful uses of them. How does one determine the rightful use of technological intervention as opposed to a wrongful use? How did the CDF make such determinations?

Consider, for example, what the reasoning is that lies beneath the following key passage from *Donum Vitae*: “The one conceived must be the fruit of his parent’s love. He cannot be desired or conceived as the product of an intervention of medical or biological techniques; that would be equivalent to reducing him to an object of scientific technology. No one may subject the coming of a child into the world to conditions of technical dominion.”⁶ At first glance, this passage seems to contradict the quotation I just cited above from *Dignitatis Personae*, which states that technological intervention ought not to be rejected merely on the grounds that it is artificial and suggests that there are morally good technological interventions that assist the process of conception. Here, by contrast, *Donum Vitae* states that the

⁵ CDF, *Dignitatis Personae*, §12.

⁶ CDF, *Donum Vitae*, II.B.4.c.

human person cannot be conceived as a product of such intervention, implying that the intervention in conception “would be equivalent to reducing him to an object of scientific technology,” placing the child in a different relationship entirely, one of “technical domination.” So which is it? Does technological intervention in the process of conception undermine the dignity of the human person, or does it not? Are these passages simply unclear? What then accounts for the *essential difference* between artificial reproductive technologies that aid in the process of conception in a morally sound way and intervention that is illicit?

One of the most common responses to this question has been an appeal to the inseparability of the unitive and procreative dimensions of the conjugal act as stated in *Humanae Vitae* and cited explicitly in *Donum Vitae*.⁷ Moral theologians have rightly understood this inseparability as foundational for sexual ethics, yet nevertheless, I believe that simply asserting the inseparability of these ends provides an insufficient analysis if moral theologians are to tread through the murky waters of the latest developments in artificial reproductive technologies. In order to serve the Church in articulating her truths with greater clarity, it is necessary to be able to articulate the underlying reason for their inseparability.⁸ It is not sufficient for moral theologians simply to assert *that* the unitive and procreative dimensions ought not to be separated; they must also understand *why*? Furthermore, they must be able to see clearly *what* is happening in the causal order in nature when this separation occurs. In fact, to speak of “nature” or the “natural order” in the Catholic tradition is precisely to recognize the order among causes that God has wisely inscribed into his creation. Nature is intelligible because there are causes at work within it that are wise and beautifully ordered, one to another, and to an end. Man must first discover this order and then choose to act in accord with it. *Agere sequitur esse*. As the tradition has always affirmed, to depart from this order destroys the possibility for man and woman to give and to receive genuine love, for love is always rooted in the truth of the human person, his nature, and his ends. My conviction is that moral theologians must be able to see clearly this

⁷ Ibid., II.B.4.a.

⁸ In *Veritatis Splendor* (August 8, 1993), Pope John Paul II notes that there are limitations to what the magisterium can articulate in any given document, and he explicitly exhorts moral theologians to be able to understand and to articulate the reasons “underlying” the Church’s moral teaching (§110).

ordering among causes—especially the relationship between agency and finality—in order to make sound moral judgments. This precise lens is especially important for reproductive bioethics, in which new artificial forms of dissecting the process of reproduction make it more difficult to see where exactly the natural law is being disregarded.

In reproductive bioethics, the right use of technological intervention and medicine helps to restore the ends that nature seeks to achieve, while it also respects the agency of nature in this process. The reason underlying the inseparability of the unitive and procreative ends of the conjugal act is that spouses possess a great dignity in being a *real agent cause* of procreation through the conjugal act. This agency is the root reason for why the unitive and procreative ends of the conjugal act must not be separated. The ends are inseparable because the agency of the spouses in their embodied union is of its very nature causally ordained to procreation, as agent cause to final cause. More precisely, there is no such thing as a conjugal act without the male himself causing his own genetic and procreative seed to be given to the woman, whose body actively takes it into herself. In the very act of being unitive, their bodies are at the same time striving for procreation, even if it may not be their deliberate intention or occur in that instance. Even the immorality of contraception is more clearly seen when considering the underlying conjugal agency of the spouses, because a contraceptive act directly destroys the very agency of either the man or the woman toward the end of procreation. A couple that contracepts deliberately chooses an act that directly causes the disruption of their own agency, whereas a couple practicing natural family planning (NFP) either to achieve or to postpone a pregnancy never chooses an action that destroys their own natural agency to the end of procreation—even if conception does not occur—and they are thus able to maintain marital intimacy that is ordered and beautiful. The order and beauty of their marital love is maintained precisely when conjugal agency is respected and not deliberately destroyed in one way or another by various technological interventions.

Thus, the moral question that needs to be asked and answered in every new reproductive technology is the following: is the agency that belongs to the couple in being real causes of their union and procreation being usurped by technology, or does the technology assist and respect conjugal agency? This is the crux of every moral question in reproductive bioethics. I argue that, when the CDF made definitive pronouncements in bioethical questions related to artificial techniques for conception, the logical consistency of their thinking

was rooted in their intuition that sound moral reasoning in these matters always respects the conjugal agency of the married couple.

Consider how this reasoning applies to the specific issues concerning artificial reproductive technology throughout *Donum Vitae* and *Dignitatis Personae*. If one considers the passage from *Donum Vitae* cited above with new eyes attuned to the reality of conjugal agency, it is clear that it does not contradict the text from *Dignitatis Personae*. “The one conceived must be the fruit of his parent’s love.” Underlying this text is the affirmation that the spouses must be the agent causes of the conception, and not merely in any way possible, such as being the technicians themselves who unite sperm and egg *in vitro*, but only through the loving union of the conjugal act. Both aspects of conjugal agency are being articulated here. Likewise, when *Donum Vitae* states, “He cannot be desired or conceived as the product of an intervention of medical or biological techniques,” this prohibition does not imply, simply speaking, that there can be no medical help for spouses or technical interventions whatsoever, but rather that the interventions must not usurp the conjugal agency of the spouses. If such agency is taken over by another and someone else other than the spouses takes on the role of agent cause, the fundamental relationships change. The child is simply a “product” desired and purchased rather than the fruit of his parents’ love. It is not the use of technology or the lack of it that determines the moral object, but whether or not the proper causal role of the spouses is being unlawfully usurped in the clinical actions being performed. Every time the causality that is proper to the spouses in the act of intercourse is usurped by another, the action in question is immoral. This logic is consistent throughout *Donum Vitae* and *Dignitatis Personae*.

The argument most clearly surfaces in this text of *Dignitatis Personae*: “A medical intervention respects the dignity of persons when it seeks to assist the conjugal act either in order to facilitate its performance or in order to enable it to achieve its objective once it has been normally performed.”⁹ The CDF is arguing that the correct use of technological intervention must aim to restore conjugal agency when, for various medical reasons pertaining either to the man or to the woman, this ability is impeded. *Dignitatis Personae* gives various examples of right uses of intervention: “Certainly, techniques aimed at removing obstacles to natural fertilization, as for example, hormonal treatments for infertility, surgery for endometriosis, unblocking of fallopian

⁹ CDF, *Donum Vitae*, II.B.7.

tubes or their surgical repair, are licit. All these techniques may be considered *authentic treatments* because, once the problem causing the infertility has been resolved, the married couple is able to engage in conjugal acts resulting in procreation, without the physician's action directly interfering in that act itself. None of these treatments replaces the conjugal act, which alone is worthy of truly responsible procreation."¹⁰ This text states that interventions that aim to restore the proper agency to the spouses are morally responsible and considered "authentic treatments." The text also states that the physician's action ought not to interfere with the conjugal act. In other words, he or she ought not to usurp the causality proper to the spouses through their intercourse. The dignity of spousal agency in the conjugal act is so important that to replace it is to step outside of the natural order into an action that cannot be *per se* ordered to the good and end of man.

Another intervention examined in the text of *Donum Vitae* is homologous artificial insemination. This process involves a woman being artificially inseminated by her husband's sperm when there is some biological defect that is causing infertility. There are currently various methods by which this insemination process could occur.¹¹ How are these various types of intervention to be morally evaluated? *Donum Vitae* states, "homologous artificial insemination within marriage cannot be admitted except for those cases in which the technical means is not a substitute for the conjugal act but serves to facilitate and to help so that the act attains its natural purpose."¹² The argument is as follows: it is not licit for an agent other than the husband to be the cause of the sperm entering his wife's body. This action is wrong for two reasons: first, because it separates from the conjugal act an action that fundamentally belongs to that act—namely, the giving of the sperm to his wife that completes the union—and second, because it takes away from the husband his active causal role in the process of impregnating his wife. A technician who reinserts the husband's sperm into his wife's body outside of the conjugal act contradicts the agency of the natural order. If the action or the reproductive technology in question does not "substitute for the conjugal act, but serves to facilitate and to help that act attain its natural purpose," then, according to the CDF, the action is licit.

¹⁰ CDF, *Dignitatis Personae*, §13.

¹¹ Two examples of recent technologies are gamete intrafallopian tube transfer (GIFT) and tubal ovum transfer with sperm (TOTS).

¹² CDF, *Donum Vitae*, II.B.6.

The underlying principle of conjugal agency is even more clear in the processes of homologous and heterologous IVF and surrogacy. It is important to recognize that the Church's argument against these procedures is not simply that there is a third party's involvement in the process of procreation. As shown above, there can, in fact, be licit involvement of a third party physician who assists in the healing process proper to his medical art when a couple cannot conceive on their own, so long as the physician does not take over the causal role of the spouses in the conjugal act. The arguments against the procedures of IVF and surrogacy, in addition to the causing of human embryos to be destroyed in the process, is the separation of what properly belongs only to the conjugal act and only to the spouses as real agent causes of conception through their union.¹³ Therefore, even if the process of IVF could be so "perfected" in the future that not one embryo were lost, IVF would still be intrinsically evil in principle according to the following argument:

But even in a situation in which every precaution were taken to avoid the death of human embryos, homologous IVF and ET dissociates from the conjugal act the actions which are directed to human fertilization. For this reason the very nature of homologous IVF and ET also must be taken into account even abstracting from the link with procured abortion. . . . Homologous IVF and ET is brought about outside the bodies of the couple through the actions of third parties whose competence and technical activity determine the success of the procedure. Such fertilization entrusts the life and identity of the embryo into the power of doctors and biologists and establishes the domination of technology over the origin and destiny of the human person. Such a relationship of domination is in itself contrary to the dignity and equality that must be common to parents and children.

Conception *in vitro* is the result of the technical action which presides over fertilization. *Such fertilization is neither in fact achieved nor positively willed as the expression and fruit of a specific act of the conjugal union. In homologous IVF and ET, therefore, even*

¹³ CDE, *Donum Vitae*, II.B.5: "It has already been recalled that, in the circumstances in which it is regularly practiced, IVF and ET involves the destruction of human beings, which is something contrary to the doctrine on the illicitness of abortion previously mentioned."

*if it is considered in the context of de facto existing sexual relations, the generation of the human person is objectively deprived of its proper perfection: namely, that of being the result and fruit of a conjugal act in which the spouses can become “cooperators with God for giving life to a new person.”*¹⁴

In this argument, the CDF is stating that there is something problematic about actions that should normally take place within the couple’s intimate sphere taking place “outside the body” and “through the actions of third parties.” What exactly is wrong with these two things? Is it the local movement to a new place that constitutes the malice? Not exactly. The problem is that the change in place is a concomitant effect of the real malice of taking away the agency from the couple, and this is done by moving the gametes and having a new agent unite them in a petri dish. What the spouses should be uniting and causing through their own union another person *causes*. The moral problem is not that a third party is “helping” the process of conception in some way, but that the way deliberately chosen usurps the agency proper to the spouses and the manner given to them to be such agents: “It is in their bodies and through their bodies that the spouses consummate their marriage and are able to become father and mother.”¹⁵ The CDF intuitively feels that to change the agent cause actually changes the relationship of the embryo to its creators. It puts the embryo into a relationship of “domination” unfitting to its inherent dignity. It is not the *technical* part that necessarily causes the child to be under the “domination of technology,” but *disregard for the causal order* that this specific technology enables. Therefore, “fertilization achieved outside the bodies of the couple remains by this very fact deprived of the meanings and the values which are expressed in the language of the body and in the union of human persons.”¹⁶ Depriving the spouses of the gift of bestowing fatherhood and motherhood upon each other through the agency of their own bodies deprives them of the union proper to their married state.

If homologous artificial fertilization is illicit and opposed to the unity of marriage, one can expect *a fortiori* that heterologous artificial fertilization will also be condemned as illicit. Heterologous artificial fertilization is defined as using IVF and embryo transfer “to achieve a fusion of gametes of at least one donor other than the spouses who

¹⁴ Ibid., II.B (italics).

¹⁵ Ibid., II.A.3.

¹⁶ Ibid.

are united in marriage.”¹⁷ The CDF argues that this action is contrary to the unity of marriage: “Respect for the unity of marriage and for conjugal fidelity demands that the child be conceived in marriage; the bond existing between husband and wife accords the spouses, in an objective and inalienable manner, the exclusive right to become father and mother solely through each other. Recourse to the gametes of a third person, in order to have a sperm or ovum available, constitutes a violation of the reciprocal commitment of the spouses and a grave lack in regard to that essential property of marriage which is its unity.”¹⁸

At the heart of the “unity of marriage” and “conjugal fidelity” is the logic of conjugal agency. To preserve the bond between husband and wife, spouses can licitly become a father and a mother only through their own embodied agency in spousal union. This point is first and fundamental. What makes heterologous artificial fertilization one step worse than homologous artificial fertilization is that it also brings into the situation the gametes of a third party. One might ask how accepting third party gametes could be different than accepting an organ donation. In the area of human sexuality, to seek another’s sperm or ovum “constitutes a violation of the reciprocal commitment of the spouses” who ought to be giving and receiving the embodied personhood of the other through their love-making. It permits one spouse to say to another through their actions, “you cannot make me a parent, so I will look elsewhere (another gamete) and without you (outside the agency of the conjugal act) for one who can.” When spouses engage in the conjugal act, they are both the *agent* cause of a new child’s coming to be and the *material* cause, the genetic parents. It is not even possible to introduce a new third party gamete (material cause) without having first violated and usurped the agent causality of the spouses proper to their union. Once this violation occurs, the process of reproduction becomes even further ruptured and dissected. Even if both spouses consent to this action, the reception of a third party gamete only deepens the rupture of the bond. Thus, heterologous artificial fertilization “brings about and manifests a rupture between genetic parenthood, gestational parenthood, and responsibility for upbringing.”¹⁹ The CDF wisely argues that rupturing conjugal unity breeds societal disorder: “Such damage

¹⁷ Ibid., II.A.2.

¹⁸ Ibid.

¹⁹ Ibid.

to the personal relationships within the family has repercussions on civil society: what threatens the unity and stability of the family is a source of dissension, disorder and injustice in the whole of social life.”²⁰ The child might rightly wonder who is his real mother and father (genetic? gestational? adoptive?), and legal battles may ensue over the complexity of the unjust situation in which reproduction has been so brutally dissected into various parts.

Finally, the logic of conjugal agency extends to the question of surrogacy that *Donum Vitae* condemns as illicit “for the same reasons which lead one to reject heterologous artificial fertilization: for it is contrary to the unity of marriage and to the dignity of the procreation of the human person.”²¹ In addition to the “same reasons” explained above, a surrogate mother participates formally in the malice of IVF. She has not only consented to a couple’s disregard of their own spousal agency in using IVF to separate the unitive and procreative ends of the conjugal act, but she also disregards her own sacred role as wife and mother. If she is married, she allows another to impregnate her outside of the conjugal act. As cited above, *Donum Vitae* explicitly condemns the action of being “fertilized through insemination with the sperm of a man other than her husband.” If she is not married, she ought not to become pregnant artificially or otherwise because she does not have a spouse, and she violates the union of her own future marriage.

At the root of all of these illicit actions stands the intelligible reality of conjugal agency as the determining criteria for the CDF in its evaluation of reproductive bioethics. One might ask why, ultimately, this reality of conjugal agency is so important. What difference does it make for personal relationships? The answer is at once simple and profound. There is great dignity in being the agent cause, for in doing so, a man and woman really do bestow fatherhood and motherhood upon each other as a personal and exclusive gift that only the other can give.²² Furthermore this agency creates right relationships within the family. The wife can say in truth to her husband, “it is *you* who made me a mother,” and likewise a husband to his wife, “it is *you* who

²⁰ Ibid.

²¹ Ibid., II.A.3.

²² Ibid., II.A.2: “Respect for the unity of marriage and for conjugal fidelity demands that the child be conceived in marriage; the bond existing between husband and wife accords the spouses, in an objective and inalienable manner, the exclusive right to become father and mother solely through each other.”

made me a father.” It is precisely their own personal and embodied agency that secures the inseparability of the unitive and procreative ends of the conjugal act. The union is ordered to procreation, and in turn, the establishment of these new relationships among the spouses and to the new child deepens their own union. The fruit of their love, the child, now stands in a filial relationship to the parents precisely because they were the real agents of his coming to be through a personal union of being given and received as a gift of love.²³

When a technician creates a human person in a petri dish, the child comes into existence in a very different relationship. The change in agency changes the relationship. The child now stands as an artifact to the artificer and is then subject to a real “domination” of technology, reduced to a “product,” or merely an “object.” It is the absence of conjugal agency that changes the very nature of the child’s relationship to his creators. Even a married couple who supplies a technician with a sperm and an egg that he will unite *in vitro* does not cause the same kind of relationship as a married couple who causes conception through spousal union. The actions that the former have chosen are contrary to their own unity, as well as contrary to the dignity of the child. The natural causal order has been violently disrupted, and the parents now stand *forever* in relation to their genetic child as the material cause but *not* the agent cause of their child’s coming to be. They handed over their causal dignity to the technician, and that is the root of the malice. The change between the natural order and this IVF event is dramatic, even if couples who engage in IVF fail to perceive it as such.

Allow me to press the question further. What is so dramatic about this change in causality when, in the end, the couple gets their baby? When a technician “makes” a child in the laboratory through his own agency, he quite literally becomes that child’s co-creator. The parents, while genetically related, are no longer the co-creators, for they themselves did not actually create the child. They merely supplied the matter and renounced their agency. Why does this transfer of agency matter? It matters because the creator of a person possesses a certain authority and dominion over that person; that is why children are “naturally” subject to their parents. The basis of this

²³ Of course, I am not arguing that the parents are the *only* agent causes, since it is God alone who infuses the soul. The spouses are co-creators with God, according to his splendid wisdom and design for the human family. I am assuming that my readers already acknowledge this truth.

natural subjection is the order of nature, rooted in the agency of the conjugal act. This natural subjection is so supremely pleasing to God that it is the basis of the fourth commandment, “Honor your father and mother,” the very linchpin between the commandments directed to love God and those directed to love of neighbor. Now, changing the causality changes the dominion. The technician could, in a real sense, argue that the embryo belongs to him and is *his* artifact because he was the agent who caused the child to be. “If I made you, you belong to me.” Such an attitude also explains why technicians often treat these human embryos as mere artifacts that can be discarded. This slave-like relationship of a child to a technician is abhorrent and contrary not only to the child’s dignity but also to spousal unity that ought to have been the ground and origin of that child’s coming to be. The spouses should never give to another their God-given gift to be co-creators with him. God has willed this agency to be the ground for right relationships within the family, through conjugal love. Nevertheless, the child born of such immoral actions possesses the same dignity as any other child and deserves to be received and raised in love.²⁴

At the heart of defending the dignity of the human person and rightly ordered relationships within the family is the need to identify and to respect the causal order that God has designed in nature. Such an emphasis on causality is not anti-personalistic. On the contrary, to discover the intelligibility of the causal order and to live according to it both respects and promotes healthy relationships because doing so reveals the truth about who man is and what he is made for. The truth is that agency in nature affects reality and human relationships in a deeply personal way. Consider that amazing ontological difference between a child baptized and a child unbaptized. The agency of grace that is bestowed in the sacrament creates a new *personal* relationship of the child to his beloved Father in heaven and the child’s new relationship to the Christian community and the Mystical body. Consider also man and woman as they stand at the altar on their wedding day. They themselves are the agents of the sacrament of matrimony that creates an entirely new sacramental bond through the consent of their vows. They now exist in a new relationship to one

²⁴ Ibid., II.B.5: “Although the manner in which human conception is achieved with IVF and ET cannot be approved, every child which comes into the world must in any case be accepted as a living gift of the divine goodness and must be brought up with love.”

another that did not exist prior to their exchange of vows. If either the man or the woman is unable to exercise such voluntary *agency* at the altar, no new valid *bond* is created. Whether or not one is a real agent cause or the recipient of another's agency affects the relationship between man and woman in a deeply personal way.

The Logic of Conjugal Agency Applied to the Artificial Impregnation / Embryo Adoption

It is now possible to return to the original question about the morality of embryo adoption. As I have argued, it is only by seeing with new eyes the intelligibility of conjugal agency as the logical principle in other reproductive bioethical issues treated in *Donum Vitae* and *Dignitatis Personae* that one can make progress in the dialogue about the morality of embryo adoption. In this section, I will simply seek to answer the question I raised for all other moral issues in reproductive bioethics cited in these documents: is the agency that belongs to the couple in being real causes of their union and procreation being usurped by technology, or does the technology respect conjugal agency?

Because of the nuances associated with the question of embryo adoption, it is more difficult at first to see how conjugal agency applies to this question. The greatest difference between the prior reproductive issues examined and this one is that conception has already occurred, and it has occurred apart from pregnancy, which is fundamentally unjust to the dignity of the embryo. Nevertheless, the text of *Dignitatis Personae* in its examination of embryo adoption in §19 states that embryo adoption is “not dissimilar” to other illicit artificial technologies (IVF, surrogacy), including the transfer of embryos for infertile couples.²⁵ The latter was deemed “not ethically acceptable” and likened to the problematic nature of IVF and surrogacy even though there is a real difference in that IVF is artificial *fertilization*, whereas embryo transfer for infertile couples is artificial *impregnation*. *Dignitatis Personae* itself seems to intuit a morally problematic connection between these procedures, yet it does not provide a formal rationale for their connection other than alluding to their being against the unity of marriage. Thus, the key question in

²⁵ The text of §19 of *Dignitatis Personae* uses the phrase “treatment for infertility” to refer to the idea proposed to the CDF of allowing the embryos to be transferred for infertile couples. I believe my phraseology is more accurate, since it is obvious that embryo transfer does not in any way “treat” the underlying causes of infertility either in the man or in the woman.

the debate about the morality of artificial impregnation is *whether or not, in the natural order, the conjugal agency of the spouses extends not only to conception but also to impregnation*. If the agency in nature does extend to impregnation, then artificial impregnation is intrinsically immoral because it violates the causal order; if the agency does not extend to impregnation, then it is not immoral.

Other opponents of embryo adoption have argued that, inasmuch as a technician intends to impregnate a woman artificially outside of the conjugal act, he violates what *Donum Vitae* states is the “exclusive right to become a father and mother solely through each other.”²⁶ Elizabeth Rex, a proponent of embryo adoption, argues to the contrary that embryo transfer is not *per se* ordered to the impregnation of the adoptive mother because: “Impregnation scientifically occurs at the moment the mother’s ovum is fertilized by the father’s sperm. Implantation, scientifically happens after the impregnation either naturally or following the embryo transfer.”²⁷ She concludes: “Therefore, since impregnation and motherhood both occur *prior* to embryo transfer, then embryo transfer cannot be ‘per se ordered to the motherhood of the woman.’ Likewise, in the case of an adoptive mother and an adopted frozen embryo, both the impregnation and the legal adoption of the frozen embryo by the adoptive parents take place *prior* to the transfer of the adopted embryonic child into the womb of the adoptive mother.”²⁸ According to Rex, embryo transfer is not ordered to impregnation because the impregnation has already occurred prior to the transfer.

I believe that there is a serious flaw with this argument. It is *only* in natural conjugal relations that “impregnation” is a reality simultaneous with conception. Outside of those relations—that is, in IVF conceptions—the reality of conception has truly occurred, but *not* impregnation. The scientific definition of impregnation as simultaneous with conception applies *only* to conceptions as the fruit of conjugal relations. In fact, the entire reason that moral theologians are arguing over the morality of embryo adoption is precisely because of the quite obvious fact that “conception” has occurred and “impregnation” has *not*. That is the fundamental moral problem and the reason for the injustice. The simultaneity of these two realities has been ruptured by

²⁶ CDF, *Donum Vitae*, II.A.2.

²⁷ Rex, “IVF, Embryo Adoption and Embryo Transfer,” 231.

²⁸ *Ibid.*, 232 (her quote here is of Edward DeLaquil, Letter, *National Catholic Bioethics Quarterly* 13, no. 1 [2013]: 17–18, at 18).

technology. Rex's use of the term "impregnation," then, is entirely equivocal in asserting that, even in IVF conceptions, "impregnation" has occurred when there is no woman who is actually pregnant. She is absolutely correct to state that, scientifically, impregnation occurs at conception so long as what is understood by this definition is that there is an embryo within *an actual woman's* reproductive tract (even before implantation), which is implied in the scientific definition. Consider that, "scientifically," one detects signs of "pregnancy" in the blood or urine of an actual woman who is gestating a child. Before the abandoned embryo is within the body of a woman, there may be a genuine legal adoption by the signing of papers, but there is in fact no "impregnation." The use of the term is equivocal, and hence, her conclusion that embryo transfer is not *per se* ordered to impregnation and to the motherhood of the woman who adopts the orphaned embryo does not follow.²⁹

Nevertheless, Rex's argument is particularly valuable for clarifying and unveiling what is, in fact, taking place in the natural causal order. In natural conjugal relations, conception is a reality absolutely simultaneous with impregnation, as the scientific definition demonstrates. When spouses cause the conception of a new child through the conjugal act, the reality of conception is simultaneous with the reality of the woman being impregnated. There is one cause of these two realities simultaneously. The very moment that there is new life, even prior to implantation, the woman is in fact pregnant. This recognition of the simultaneity of realities caused by the spouses is important for seeing just how conjugal agency applies to the question of artificial impregnation. It reveals that, according to the order of

²⁹ In addition to the theoretical problem with this argument, there is something strange and somewhat insensitive in suggesting to a woman who has gone through with the "impregnation" (what else does one call it?) of embryo transfer that she is not really being "impregnated" and, therefore, is not "pregnant," but that, rather, since the impregnation is "prior," it belongs, properly speaking, to the genetic mother, who is in fact *not* pregnant. When this generous woman who adopts the embryo endures nausea, back pain, swelling, or countless other trials and difficulties of the gestation period—not to mention the difficulties of childbirth itself—it is simply false to tell her that she is not pregnant and has not been "impregnated" because the "impregnation" happened prior to the embryo transfer that took place within her body. If Rex is not denying that, after the transfer, the woman is in fact pregnant, then she must hold to a rather absurd conclusion that the woman is now pregnant but was never "impregnated."

nature that God himself has established, the dignity of being an agent cause through the conjugal act *does* in fact extend not only to conception but also to impregnation, because the very same agents cause both of these realities simultaneously, and by one and the same act. It belongs to the spouses exclusively to be the agent cause not only of conception but also of impregnation. For a husband to impregnate his wife is included in his causal role. If another agent causes impregnation of a woman, he or she fails to respect the agency of the spouses rooted in nature. Therefore, since to be a real agent cause not only of conception but also of impregnation belongs by nature to the spouses, it is always immoral for another agent to usurp what belongs to the spouses. If this causal role is taken away, even though both spouses consent to it, and even if it is for a “praiseworthy” reason, the action itself is contrary to the order of nature, and thus always illicit. For this reason, I conclude that artificial impregnation is by nature opposed to the unity of marriage and, therefore, intrinsically immoral.³⁰

Contrary to my argument that it belongs causally to the husband to impregnate his wife, another proponent of embryo adoption, Christopher Tollefsen, has argued that it is in fact false to claim that, in the natural order, the husband makes his wife pregnant. He states: “The claim that the male makes the female pregnant is, strictly speaking, false. *Making her pregnant is not any part of what the male does in the conjugal act, even in one that results in generation.* And it is thus not an imitation of the marriage act for a woman to be made pregnant by embryo transfer.”³¹ Tollefsen gives an argument for his position by attempting to answer the question “who makes the woman pregnant?” He gives

³⁰ As I have argued above, embryo transfer involves the technician taking over the role of agent cause of impregnation. This kind of action formally differs from other medical acts such as, for example, reimplantation of an embryo in a womb after an ectopic pregnancy, if it were at some point medically possible. The moral difference between these two cases is that the change in place does not usurp the causality of the husband in impregnation, since impregnation and implantation have already occurred in an actual woman, although the implantation has occurred in a place where the embryo cannot develop and, thus, medical intervention is therapeutic and necessary, especially because the situation is life-threatening for the mother. I make this distinction to clarify that moving the embryo and attempting to reimplant it within the same woman for therapeutic reasons can potentially be a morally sound medical action and that this kind of action has a different moral object than artificial impregnation.

³¹ Tollefsen, “Could Human Embryo Transfer Be Intrinsically Immoral?,” 94 (*italics mine*).

the following reply: “The question is; does the man make the woman to be in this condition? And the answer appears to be no: There are at least three better candidates. First, from one point of view, the man and the woman together generate the new human being: As I argued above, there is no sense in saying that the man has played the more active part, so if the man has made the woman pregnant, so has the woman herself.”³²

Tollefsen rightly argues that one ought not to deny the agency of both persons, husband and wife, in bringing about generation. This conclusion is certainly accurate according to modern biology. But to admit that both persons play an active causal role in generation does not lead to the conclusion that the man does not make the woman pregnant; rather, it leads to the conclusion that it is false to say that *only* the man makes the woman pregnant. Tollefsen mentions as his second “candidate” that God is the author of all human life and that spouses are co-creators with him. I do not see any problem in admitting these biological and metaphysical facts, though neither do they deny the real causality of both spouses as ordered to the end of procreation, and simultaneously, impregnation.

Tollefsen then mentions a third “candidate,” the embryo itself, which makes the woman pregnant:

Why should we not say that the embryo itself—him or herself in fact—has made the woman pregnant? The embryo does not, of course, generate itself. But I am here addressing, not the question of who generates the embryo—man, woman, and God together do that; but rather the question of who makes the woman to be pregnant. Neither the man nor the woman contributed a new human being to the act of generation, nor did either make a new human being. They performed human acts which are themselves apt for bringing together sperm and an egg, each of which are parts of human beings with a special biological teleology.³³

³² Ibid., 96.

³³ Ibid., 97. Tollefsen continues here to describe this teleology in biological terms:

The egg and sperm engaged in mutually transformative action, as the sperm penetrated the zona pellucida, and plasma membranes from the sperm and the ovum fused. Both the nuclei of the oocyte, and of the sperm, which contain all the chromosomal material of the sperm and

Tollefsen argues here that, while it is clear that the man, woman, and God together generate the embryo, the question “who generates?” is a fundamentally different question from that of “who has made her pregnant?” I have already shown above that, in natural conjugal relations, those who generate the embryo are also responsible for impregnation because these realities are simultaneously caused by the same agents. Yet the reason he gives for exploring these as distinct questions even within the natural order (apart from IVF, which separates these realities) is that, he argues, the spouses themselves did not “make a new human being,” but rather only performed an action that has a potential for uniting sperm and egg, and that these gametes then continue toward fertilization according to their “special biological teleology.”

I disagree with Tollefsen’s argument that the spouses did not make a new human being; it is precisely what they did as co-creators with God. It is contradictory to say that “man, woman and God together” generate the embryo and then claim that the spouses, through their love-making, “do not make a new human being.” Are the spouses responsible for generation or are they not? Tollefsen, is drawing a distinction between the actual fertilization and the sexual acts that are apt for bringing about fertilization. One can rightly distinguish these two moments chronologically, but one ought not to sever their underlying causal unity. Yet he is arguing that the spouses perform *only* the action that has a potential for generation, that they themselves “do not make a new human being.” They perform a generative act, but they do not actually generate. He is arguing, in other words, that a man’s sperm has caused fertilization but the man himself has not. Likewise, the woman’s ovum has caused fertilization but the woman herself has not. Again, in what sense are the man and woman real “generative causes,” as he states above, if one does not attribute

egg, then enlarged, and replicated their DNA in anticipation of their first mitotic division.

The male and female pronuclei then lined up and fused together. As part of the formation of gamete cells, the number of chromosomes characteristic of the human cell was reduced from 46 to 23 in sperm and egg. When the male and female pronuclei fused, the 23 chromosomes from the male and the 23 from the female came together, resulting, as William Larsen writes, “in the formation of a zygote containing a single diploid nucleus. Embryonic development is considered to begin at this point” (Larsen, 2001, p. 3).

the origin of the motion of sperm and egg to their agency as persons and to a specific act that was the very origin of that agency?

This denial of the origin of the agency presents a very strange and dissected view of how causes are operative in the order of nature. It is a denial of causality, akin to Hume, to consider these actions merely as separate events—first a conjugal act and then a separate event of sperm and egg uniting—and to fail to acknowledge the underlying agency between these events. To be clear, one can rightly distinguish these events as chronologically separate moments, but *not* as moments that are unrelated to one another as agent causality extending and leading to the final cause. What is a “biological teleology” without a recognition of the agency that has brought it about? There is no such thing as achieving a *telos* or end without acknowledging the real agency toward that end.

Consider for example, when Babe Ruth hits a home run, one does not claim that the bat is responsible for the home run but the baseball player is not. One rather traces the origin of the agency back to the man who was the *first* cause of the thing’s motion. That is the genuine meaning of an agent cause. Tollefsen’s view of causality would have his readers believe that Babe Ruth performs an action apt for hitting a home run but, when the ball actually connects with the bat and flies into the stands, Babe Ruth is not actually the one who causes the home run. One might even say on his view that it is the ball itself that, in a certain sense, has caused the home run, not because it somehow moved itself, but because one finds it now existing in the stands and the existence of a ball in the stands is one way of defining a home run. Once again, to be clear, one can rightly distinguish the act of swinging the bat (even swinging many times without connecting with the ball) as an action chronologically distinct from the moment the home run is actually achieved; but one cannot fail to acknowledge that, *when* the home run is achieved, it was not simply the bat that caused it, but the real agency of the baseball player.

Tollefsen’s notion of causality is problematic when one considers the very dignity and excellence of the spouses’ role in procreation. When a couple has a baby and one calls the man a “father” and the woman a “mother,” one is acknowledging that they are the personal agents from which their child derives his origin. Not only are they genetically related, and not only were their sperm and egg agent causes, but they themselves as personal agents actually caused their child to exist through the beauty of their marital intimacy, which caused the motion of the sperm toward the end of fertilization it is

seeking to realize. In cooperation with God, the spouses really made that child, and that is part of the great dignity of sex and procreation. In fact, if the “act apt for generation” and “fertilization” itself are simply events that are not essentially and causally connected, why does the Church continually defend the dignity of procreation by defending the beauty of the conjugal act against technologies that threaten to rupture this act from procreation?

I find Tollefsen’s denial of the origin of the agency as residing in the spouses communion even more problematic in the next paragraph of his argument:

At the very point when the woman . . . becomes pregnant the activity of the man and the woman has been superseded by the self-directed activity of the new entity, the embryonic human being. The generative causality of the man and woman—the causality effected by the man’s sperm and the woman’s ovum—is at an end precisely because generation is over, and a new being with its biological causality now exists. But it is this existing that “makes” the woman pregnant. If anything makes the woman pregnant, then, it might seem that it is the new child inside her.

If so, then, it would seem that when the woman accepts an embryo into her womb via embryo transfer, she does not imitate her part in the marriage act (nor does the clinician imitate the part of the man.) It is true that she admits flesh not of her flesh that makes her pregnant, but this is not what she does in the marriage act even when, in consequence of that act, she becomes pregnant.³⁴

Tollefsen claims that the agent causality of the spouses does not actually cause pregnancy (“impregnation”), since he argues that that agency terminates when conception occurs. According to his argument, the reason the husband does *not* impregnate his wife is that “the generative causality. . . is at an end precisely because *generation is over*, and a new being with its biological causality now exists.” The problem with his argument is that the agency of the spouses comes to term precisely because it really *caused* what it was meant to cause. The agency terminated in procreation and in pregnancy (simultaneously) precisely because *it was that very agency that caused those realities to be*.

³⁴ Ibid.

Without that agency, the end would not be achieved. Therefore, it is absolutely true to say, contra Tollefsen, that it is precisely the generative agent causality of spouses in their love-making that “makes her pregnant.” The agency comes to term because it has actively caused the end to be realized. In fact, one cannot truly understand something’s “end” independently of its “agency.” Why? Because one cannot arrive at the end or final cause of a thing without the agent cause. It simply remains in potency until the agency really causes the end to be achieved. In the order of causes, agency and finality work together. Agents act for an end and, through their actions, truly cause that end to be realized. When the causality of the agent comes to term, that agency is now “over” precisely because *it itself* has caused its purpose to be realized. What has in fact taken place is that the purpose of a thing has been achieved *through* the very agent cause that is ordered to that purpose.

Consider, for example, what happens if I accidentally slice my finger with a kitchen knife and am in need of stitches. The agency of my body is ordered to reuniting the now separated parts in the wound and restoring wholeness by actually being the cause of its own healing. The doctor’s stitches hold the two sides together so that my body, the agent cause, can heal the wound more quickly and efficiently. It is that very agency of my body that brings about the end of a restored finger. According to Tollefsen’s concept of causality, however, one could acknowledge that the healing of the finger has occurred and that there was some agency of my body in this process but he would have to argue, according to his reasoning above, that, because the actions of my body (the creation of scar tissue and the healing and reuniting of the tissues) come to term, the agency *did not in fact cause* the healing of my finger back to its original wholeness. His argument suggests that agency exists but does not actually cause the ends to which that agency is by nature ordered. Such an account of the nature of causality is patently false. What is an agent cause that does not actually cause? It is simply not a cause at all. Either one acknowledges “generative causality” as really “causing” or one is not actually speaking about generative *causality*.

Tollefsen seems to overlook this problem by drawing the reader’s attention to the reality that the embryo now has a “biological causality of its own.” What does this mean? Of course it means that, from the moment of conception, the new embryo has its own intrinsic powers of the soul that set it in motion toward a variety of ends in his or her development. The potency is being actualized toward the ends

of human development precisely through the agency of the embryo and the nourishment of his or her mother. According to Tollefsen's notion of causality, however, when the developing embryo takes in nutrition, the agent causality of the child's body causing the growth and development toward these higher ends of development are not actually causing growth and development. He is essentially arguing for a notion of an agent causality that, because it comes to term, does not really cause the ends toward which it is ordered. This account of causality is erroneous. The agency comes to term and is "over" precisely because it has in fact *caused* the end to be realized. In fact, if one accepts Tollefsen's argument that a man does not "in any way" impregnate his wife because the causality of the sperm comes to term when the ovum is fertilized, one must also accept the conclusion that a man (or woman for that matter) does not in any way cause the conception of his (or her) child—the Catholic tradition has never accepted this conclusion, nor can it ever accept it.

Tollefsen denies that the generative agency of the spouses actually causes impregnation, because he does not fully acknowledge the origin of the agency as residing in the spouses and continuing to the end of conception, but as I have demonstrated above, that agency does in fact cause impregnation, otherwise it makes no sense to speak of "generative causality." I believe that he denies this reality precisely because he rightly perceives the conjugal agency of the spouses as a real moral obstacle to allowing embryo transfer. To acknowledge fully the agent causality on the part of the spouses as really causing the conception and, simultaneously, impregnation is to acknowledge the intrinsic immorality of embryo transfer.

One final proponent of embryo adoption whose position is important to consider is E. Christian Brugger, in "Rescuing Frozen Embryos: Is Adoption a Valid Moral Option?"³⁵ Unlike Tollefsen,

³⁵ E. Christian Brugger, "Rescuing Frozen Embryos: Is Adoption a Valid Moral Option?" accessed October 29, 2017, <http://zenit.org/articles/rescuing-frozen-embryos> (*italics mine*). Brugger has also addressed this question in "In Defense of Transferring Heterologous Embryos." In my opinion, he makes a better argument for his position in the more recent of the two articles, "Rescuing Frozen Embryos," because he acknowledges therein that the marital act causes pregnancy, whereas in the former article, he argues that pregnancy does not belong to the marital act (1) because pairs of mammals do not get pregnant as a result of every act of intercourse, (2) because NFP or sterile couples can intend to consummate without intending pregnancy, and (3) because becoming pregnant outside of the conjugal act implies that

Brugger acknowledges that, in sexual intercourse, man and woman cause both conception and impregnation. But he argues that those who oppose embryo adoption collapse the distinction between procreation and pregnancy into one moral reality: “The premise that pregnancy belongs to marital intercourse falsely assumes that procreation and pregnancy are a single moral reality. This assumption however muddles the significance of the legitimate moral norm requiring the unity of procreation and marital intercourse. Sexual intercourse derives its procreative significance—affirmed and handed on from biblical times to our day—not from the fact that a woman becomes pregnant, but from the fact that a new human person comes into existence. That coming-to-be is complete with fertilization at which time pregnancy begins.”³⁶

Brugger states that conception is morally relevant and “tied” to the procreative significance of sexual intercourse but posits that pregnancy is “not” a part of the procreative significance. Another way of articulating this position is to say that, while sex causes conception as well as pregnancy, only the causality of the former is significant, not that of the latter. Brugger’s argument here is superior to Tollefsen’s in that he does acknowledge the causality of both realities as coming from the act of intercourse, but he does not find that the causality of impregnation is morally significant, whereas the causality of conception he does.

The difficulty that I find with Brugger’s argument is that it does not offer any explanation for *why* the causality of conception is morally relevant but the causality of impregnation is not. On what grounds is the latter simply irrelevant? These two realities (conception and pregnancy) are simultaneously caused by the very same agency. What warrant is there in the natural order to suggest the moral relevancy of the former but not the latter? I am not here suggesting that pregnancy has a kind of exalted moral status, but I am pointing out that the same causality is responsible for both. Either that underlying causality is morally relevant or it is not. If one admits that it is relevant, one must be logically consistent in recognizing that relevance.

Perhaps Brugger implicitly intuits that a substance–accident distinction could be made, that conception is morally significant

fornicators and adulterers would seem to be required to use contraception. None of these arguments, however, disproves the fundamental reality that *when* pregnancy occurs in the natural order, it is the agency of sex that has caused it.

³⁶ Brugger, “Rescuing Frozen Embryos.”

because a new “substance” (embryo) with an exalted dignity is created, whereas with impregnation, the body of the woman is only an “accident” of place, and thus not morally significant. To this idea, I reply that the dignity of a new substance remains even in IVF conceptions and that the morally reprehensible part of the act of IVF is the severing of conception from the very embodied *agency* that ought to have been the cause of the embryo’s origin. Therefore, even admitting a distinction between the dignity of the new substance and the place of gestation does not take away from what is morally significant in the Church’s eyes: the underlying spousal *agency*. If that agency is morally significant in reproductive bioethics—and *Donum Vitae* and *Dignitatis Personae* absolutely demonstrate that it is—then moral theologians must be consistent in recognizing its significance.

Finally, in the natural order, it does make sense to treat conception and impregnation as both morally significant, because to fail to do so is a result of not taking seriously enough the embodiment of the human person, especially the feminine body. God ordained that “procreative significance” (the potential for conception to take place) should occur within the woman’s body through the agency of spousal union. Her body is the sacred place where immortal souls are created in cooperation with spousal love and God’s own agency. At the very moment when the wife is “with child,” she is pregnant. In the natural order, when one causes conception, one causes impregnation. When one “terminates a pregnancy,” one terminates a conceived embryo. This very same underlying causality renders both conception and impregnation morally significant.³⁷

The proponents of embryo adoption I have considered here have argued for the moral liceity of artificial impregnation on the following grounds: (1) “impregnation” occurs without any pregnancy at all; (2) a generative cause does not actually cause and, hence, impregnating one’s spouse “*is not any part of what the male does in the conjugal act, even in one that results in generation*”; and finally, (3) the very same underlying rationale for why conception is connected to intercourse must be both affirmed as morally relevant and, simultaneously, denied as being morally relevant. It seems to me that these problematic arguments spring from a denial of some aspect of the

³⁷ One must also realize and prudently foresee, that the issue of artificial impregnation will not apply not only cryo-preserved embryos but also to saving embryos from mothers who are intent on aborting them, if it became medically possible to do so.

natural order, because to affirm that order fully suggests that there is a real moral problem with artificial impregnation, as much as coming to terms with this truth is certainly very difficult.

In an age in which there are many threats to the unity of marriage, it is tremendously important that couples do not give in to yet another breach of marital unity, even if it is for the best of intentions. Many couples have chosen to use intrinsically immoral acts of contraception for noble reasons as well. Governments have done the same. Yet none of these actions that disrupt the causal order at the root of the unity of marriage are to be permitted, lest God's design in nature be disregarded. As Homer poetically implies through the "immovable" marriage bed of Odysseus and Penelope at the end of the *Odessey*, the unity of marriage is deeply rooted in the order of nature itself. Homer represents this reality by describing that the reason the marriage bed cannot be moved is that a tree, a symbol of nature, runs through the center of the house and forms one of the bedposts. The knowledge that this bed cannot be moved is Penelope's and Odysseus's secret, which enables her to recognize him as her long lost spouse among other suitors. It is the marriage bed that preserves their spousal unity. Spouses, then, ought not to betray the secret of the marriage bed, rooted in the very order of nature itself, and hand over to another what properly and exclusively belongs to them alone. Let us not give our assent to moving aside what God, through his natural order, has deemed immovable.

Objections and Replies

In this final section, I will briefly address some objections raised by other contributors to the issue of embryo adoption and offer clarifying replies.

Objection 1:

Brother Glenn Breed, M.S.A., in "The Only Moral Option is Embryo Adoption," states that the object of the moral act in embryo adoption is protection and nurturing of a human life so that the child can be raised by a loving family:

Pharaoh's daughter adopted Moses to save his life. She was his adoptive mother. Is this any different from an adoptive mother who saves the life of a frozen embryo? Whether you are in a tarred basket floating down the Nile River surrounded by crocodiles or floating in a test tube surrounded by liquid nitro-

gen, your life is at risk unless someone intervenes. . . .

The object of the act of adoptive parents is to protect a human life, be it in utero, ex utero (baby or child), a fresh human embryo, or an abandoned frozen one (orphan). The parents' choice of adoption serves to protect and nurture a human life at various stages of life. The end objective in the case of prenatal adoption is to grow and birth the child, raise the child to maturity, and be the parents till death.³⁸

I reply that there is a formal difference between Pharaoh's daughter saving Moses from the river and the actions involved in embryo adoption because the former does not use the reproductive faculties in adoption at all, whereas the latter does, and uses them improperly. Artificial impregnation violates the agency proper to the spouses, whereas, in traditional adoption, such actions performed on the reproductive organs do not take place. Embryo transfer involves an action that improperly uses the reproductive faculties in a way that traditional adoption does not.

Secondly, to state that embryo adoption is a life-saving act in which the object is to grow and birth the child and raise the child until death gives some important yet insufficient information for specifying the moral object in question. It does not look at the kind of *actions* specifically performed on the woman in making this adoption possible. Consider a counter example: it would not be morally licit to directly kill a dying mother in order to hasten the saving of her preterm baby so that the baby can be adopted by another family. The action in question is surely a "lifesaving" act for the baby, albeit an illicit one. It is clear that more information is needed about the *actions* involved in the procedure to specify the moral object.

Objection 2:

Mark Latkovic, in "The Dignity of the Person: An Overview and Commentary on *Dignitas personae*," makes a similar argument in suggesting that, if couples can become father and mother through one another only through the conjugal act, then the Church ought to condemn traditional adoption, which she obviously does not. Thus, there must be other morally legitimate ways of becoming parents, since the Church commends traditional adoption:

³⁸ Brother Glenn Breed, M.S.A., "The Only Moral Option is Embryo Adoption," *National Catholic Bioethics Quarterly* 14, no. 3 (Autumn 2014): 441–47.

As noted, I believe that embryo adoption or rescue can be a morally legitimate solution to this injustice, that is, the injustice of embryos' being generated by artificial means. But does it violate the norm of *Donum vitae* that couples are to become parents only through the acts proper to each other? As mentioned above, some Catholic moral theologians have forcefully made this argument. But couples who adopt in the traditional way become parents by means of another couple's giving up their child for adoption. If one could become a parent only through the conjugal act, as this norm and this argument seem to imply, then adoption (which is approved by the Church) would have to be condemned.³⁹

If the Church at some point stated definitively that embryo adoption is illicit, she would not in any way be condemning traditional adoption. The difference between embryo adoption and traditional adoption concerns the proper moral use of the reproductive organs. When a couple traditionally adopts a child into their home, the spouses are not using their reproductive organs *at all* to make the adoption happen, much less in an improper way. But embryo adoption does make an improper use of the reproductive faculty by transferring the agency of the act of impregnation to someone who ought not to be the agent, and in a manner outside of the order of God's design: conjugal union. When *Donum Vitae* states that couples are to become parents only through one another, the CDF is speaking about the right moral use of the reproductive faculties, which does not apply in the case of traditional adoption.

Objection 3:

Edward Furton, in "Embryo Adoption Reconsidered," argues that the unity of marriage is not violated when a technician transfers the embryo into the woman because it is a clinical act in a medical setting. If one were to argue that marital intimacy is violated, then the entire field of gynecology would be morally suspect:

Some say that embryo transfer is wrong because the technician must insert the embryo into the womb of the adoptive

³⁹ Mark S. Latkovic, "The Dignity of the Person: An Overview and Commentary on *Dignitas personae*," *National Catholic Bioethics Quarterly* 10, no. 2 (Summer 2010): 283–305.

mother, and this act constitutes a trespass on the sacred bond of marriage. Only the husband, it is said, has the right to perform such an intimate act. But this objection overlooks the obvious fact that members of the medical profession routinely carry out physical examinations on the sexual organs of men and women. We do find it more comfortable, I suppose, to visit physicians of our own sex about sexual matters, but it would be a curious attitude to see any violation of marital intimacy in such an encounter. This is a purely clinical action (or ought to be) and therefore one that is not sexual in any way. As such, embryo transfer does not violate the sacred bond of marriage any more than a routine gynecological examination does. If the insertion of an embryo into the womb of an adoptive mother is a violation of marriage, then the whole field of gynecological science is suspect.⁴⁰

I reply that Furton is correct in stating that there is no moral evil or violation of marital intimacy in a patient–doctor relationship that requires routine exams on sexual organs. The violation of marital intimacy does not consist in exposing or undergoing treatment on sexual organs in a medical context. Rather, marital intimacy is violated when what belongs causally to the spouses in the marital act is taken away from them. The formal malice in embryo transfer is not that intimate organs are exposed and operated on by a medical professional; rather, it is that the technician takes over the role of agent cause of impregnation that belongs only to the spouses, a truth that is discoverable in the natural causal order. Furton has suggested in a footnote in the same article that, if a husband were to be trained, he could be the one to insert the embryo. In suggesting this as a possibility, Furton seems to be conceding to the reasonability of the fundamental importance of the husband’s agency in the process of impregnation. Yet even this action fulfills only one of the criteria for conjugal agency. There is agency, but the manner of its exercise is not conjugal.

Objection 4:

There is nothing morally objectionable in carrying an embryo to birth who is not genetically one’s own.

I reply that the problem with embryo adoption does not ultimately

⁴⁰ Furton, “Embryo Adoption Reconsidered,” 338.

reside in the fact that the child is genetically unrelated, but in the actions that are necessary to bring about the pregnancy. Nevertheless, I would add that the mere fact that the mother and child are genetically unrelated remains morally relevant and could be problematic for other reasons. *Dignitatis Personae* §19 alludes to “problems” of a “psychological” nature that could result when one receives an embryo not genetically one’s own. I have in mind here the rescue and adoption of embryos of related family members where the pregnancies forge new relationships and blur otherwise normal ones, such as when a child’s aunt becomes impregnated with her biological nephew, and so on. Yet none of these actions could take place to begin with if the agency of spousal union were not violated through IVF and embryo transfer in the first place; these actions are *malum in se*.

Objection 5:

The claim is made that opponents of embryo adoption focus too much on the biological process, and fail to perceive the issue in light of a broader theology of Christian adoption. John Grabowski and Christopher Gross suggest (in “*Dignitatis personae* and the Adoption of Frozen Embryos: A New Chill Factor?”) that the majority of theologians writing on this issue have failed to examine it within the broader biblical theology of adoption and focus too much on the biological processes involved and that this narrow focus is a flaw in their arguments: “While Berkman, Pacholczyk, and Stempsey offer different arguments concerning the labeling of embryo adoption, which lead them to different conclusions about its moral appropriateness, their analyses share a common flaw, because they focus almost exclusively on the physical processes involved in embryo transfer.”⁴¹ They continue later: “Once HET is considered in light of the Christian tradition’s theology of adoption, the biological aspects of the procedure become much less relevant, and it becomes clear that embryo adoption is at least potentially a morally licit and even praiseworthy practice—and not merely in the intentions of those who engage in it.”⁴²

I reply that, while much can be gained in broadening one’s vision to consider a Christian theology of adoption, I find these statements disconcerting coming from moral theologians who must be able to make sound moral judgments on medical procedures precisely

⁴¹ Grabowski and Gross, “*Dignitatis personae* and Embryo Adoption,” 313.

⁴² *Ibid.*, 321.

by evaluating the “physical processes involved.” Since when do the “biological aspects” of medical procedures “become less relevant” when attempting to make a moral evaluation on actions that are taking place on the bodies of individuals? Has this line of reasoning ever been a sound way of making judgments on issues in bioethics? The biological aspects matter because they are an integral part of the data that enters the moral evaluation. One cannot make a proper evaluation by overlooking such considerations. Whether a physician administers the right dose of a medication or a lethal dose is a “biological aspect” that is absolutely morally relevant.

Certainly, theologians should consider particular issues both biblically and sapientially, without wholly divorcing them from their order within the whole of God’s revelation, but that does not mean that, when one addresses such particular issues, one does not take into account the physical and biological processes involved in that issue. Consider, for example, Pope John Paul’s *Theology of the Body*. His work significantly enriches man’s understanding of human sexuality in light of the whole of God’s plan. But to defend the Church’s teaching on contraception, which was the explicit purpose of the *Theology of the Body*, one must also take into account the causality of contraceptives on the natural order. One cannot simply exclude biology and physical actions from one’s contemplative moral judgment. Actions taking place on the bodies of individuals are morally relevant to evaluating medical procedures. How can they not be? Far from it being a “flaw” in one’s moral reasoning to consider these aspects, it is a flaw to fail to consider them. Can “bio-ethics” ignore the “bio” in trying to evaluate the “ethics”?

Objection 6:

Brugger argues that “[embryo adoption] is no more a violation of the marital good than for a lactating woman to breast-feed an abandoned child for nine months.”⁴³

On the surface, there does seem to be a real similarity between the offering of one’s womb for the gestation of a preborn embryo and the offering of the breast for the nourishment of a child already born. If the latter is not immoral, then why the former? The answer to this question lies in seeing the very same principle at work: are the actions contrary to the natural order? A wet nurse does not act

⁴³ Brugger, “Rescuing Frozen Embryos.”

contrary to the causality of her body in feeding another woman's infant, nor does she somehow give to another person a causal role that belongs to her husband. The husband does not have a causal role in the act of breastfeeding, whereas he does have a very important and morally significant causal role in being an agent cause of his own wife's impregnation. For this reason, embryo adoption violates the natural order but feeding another's infant does not. N·V