

Dignitas personae and the Question of Heterologous Embryo Transfer

by

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Abstract

Contrary to the claims of many Catholic ethicists that the teaching of Dignitas personae leaves the question of human embryo rescue completely open and unresolved, this article argues that the only natural and reasonable reading of what is plainly taught in that document compels one to the conclusion that the Congregation for the Doctrine of the Faith (CDF) has implicitly and de facto committed itself to the rejection of heterologous embryo rescue. In other words, if one accepts the moral premises which the text clearly lays down, sound practical reasoning leaves one no alternative but to conclude that heterologous embryo transfer rescue is ethically unacceptable. Accordingly, if the CDF were now subsequently to say that embryo rescue is morally licit, it would have to reverse itself on certain moral claims that it committed itself to in Dignitas personae.

I. Wrapping up *Donum vitae*'s Unfinished Business – Sort of.

One of the more thorny questions to have confronted Catholic ethicists in the past few years has been the practice of heterologous embryo transfer (or HET). This procedure involves the implantation into a woman's womb of an already existing human embryo that is neither hers nor her husband's. Not having been explicitly addressed in the Congregation for the Doctrine of the Faith's earlier bioethics document, *Donum vitae*,

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the practice of HET has sparked a lively debate among Catholic moral theologians.

Most advocates of HET regard this procedure principally as a licit and praiseworthy effort to save the lives of otherwise condemned human embryos. If licit, it would also have the additional benefit of opening up the possibility of pregnancy and natural childbirth for infertile women who would not otherwise be able to experience this blessing. Opponents of the procedure, while recognizing the noble intention behind the act, object to it on the grounds that it violates 1) the principle that new life must come forth from the marital union only through a natural act of conjugal love, and 2) the mutual and exclusive right of spouses to become a mother and father only through each other.

Participants in this debate have eagerly looked forward to an official judgment on this question by the Vatican. It was thus with great anticipation that the CDF's new bioethics document, *Dignitas personae*, was awaited, as it was rumored that the question would there be addressed. Unfortunately, the document, although it does comment on the procedure, has not ended the debate on embryo rescue. Rather, it has inaugurated an entirely new dispute centered on the proper interpretation of the document's evaluation of this procedure and the intention behind it.¹

If there is a general consensus regarding *Dignitas personae's* discussion of the rescue of human embryos by means of HET, it is that *Dignitas personae's* treatment of the question is more ambiguous than either side was hoping for. Most readers admit that the tone with which *Dignitas personae* addresses HET rescue is both cautious and at least slightly negative in the manner in which it treats the question, expressing concern and alluding to several "problems" with the act. This, however, does not remove the impression of a certain lack of clarity and apparent hesitancy in rendering a definitive judgment on the issue. Advocates of embryo rescue are rightly perplexed that the document, if it intended to forbid this act, did not express itself more exactly.

Nevertheless, in spite of this ambiguity, I think that a close reading of *Dignitas personae* sheds more light on the topic than is generally recognized by those who contend that the question of embryo rescue is still open. It is my contention that, when one takes fully into account what *is* clearly affirmed in the document, there is no reasonable reading of it which does not ultimately entail that heterologous embryo rescue is morally illicit. To put it another way, once one has accepted the moral premises which the text lays down, sound practical reasoning leaves one no alternative but to conclude that HET rescue is ethically unacceptable. This is not to say that there

may not perhaps be a stilted and highly convoluted reading of the document which still keeps the door open to the practice. However, if one adheres to the most natural and, I would say, the only reasonable construction of the relevant texts, one is inevitably committed to the rejection of HET rescue.

Nota bene: I am not saying that the authors of *Dignitas personae* are implicitly or indirectly or ambiguously intending to render a judgment that HET rescue is illicit, but that, regardless of what their explicit intention was regarding that specific judgment, they have, based upon what they clearly say in the document, logically committed themselves to the conclusion that HET rescue is illicit. In other words, the CDF would have to reverse itself on certain moral judgments which it clearly makes in the document in order for the practice to be recognized as morally licit. So even if it is the case that the CDF was trying explicitly *not* to render a judgment on this particular question, it seems to have indirectly committed itself to one regardless.

II. *Dignitas personae*'s Clear Condemnation of HET as a Remedy for Infertility

The best place to begin our discussion is with the very clear condemnation of heterologous embryo transfer in the case of couples who are seeking to adopt an embryo as a remedy for their infertility. According to *Dignitas personae*, it is morally wrong for a couple who cannot conceive a child through a natural conjugal act to choose heterologous embryo transfer as the intended means of overcoming this problem. The relevant paragraph reads:

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.²

This text is crucial for our discussion for at least two reasons. First, it constitutes an ecclesial advancement of the discussion by rendering a decision on a question regarding HET which has hitherto not been explicitly addressed either by the Magisterium or by any congregation of the Roman Curia. Second, the text clearly indicates the basis for its reasons for pronouncing this form of HET to be morally illicit, linking it to the evils involved in IVF and surrogate motherhood. As we shall see, this basis has far reaching moral implications for the evaluation of embryo rescue.³

With respect to the first point, this text constitutes a clear and novel judgment by the CDF that at least some form of heterologous embryo transfer is morally illicit. This is a rather significant development, for we now have an official pronouncement by the CDF that important goods and norms relating to marriage are potentially at stake in this procedure, indeed, the very

“same” goods and norms that are compromised by “heterologous artificial procreation” and “surrogate motherhood.” According to the CDF, a woman choosing HET does, at least under certain circumstances (e.g., when she has the intention of using HET to compensate for her infertility), act against the good of her marriage covenant. Whether any woman choosing HET would infringe upon such a good *regardless* of her intention remains to be seen.

As we shall see, the answer to this latter question will depend upon whether the goods which are at stake in heterologous artificial fertilization, surrogate motherhood, and illicit HET adoption are violated solely because of the disordered intention (which is to say, the *remote end*) for which they are done, or whether there is something more objective in such acts which renders them intrinsically disordered regardless of the end for which they were chosen. We shall return to this point shortly.

For now, let us simply recognize this limited but indisputable advancement of the debate over HET by the CDF. The importance of this new clarity lies in the fact that the way in which many proponents of HET rescue have defended its licitness has sometimes given the impression that the goods of marriage could never be at stake in this procedure. In arguing for the acceptability of embryo rescue, such proponents have seemed to argue that all of the norms and goods of marriage potentially at stake in HET have *already* been violated.

Because the procreation of the human embryo has already occurred, it has been argued, the transfer of an already existing embryo into the womb of another woman can in no way violate the procreative exclusivity of the marriage covenant or the principle that procreation must come about through a natural act of conjugal love. These violations have occurred in a *prior* act performed by *other* agents. For example, E. Christian Brugger writes:

In choosing [transfer and impregnation], does [a woman rescuing an embryo] ever choose as an end or means to generate new human life by means other than a marital act? No. The tiny human person has already been brought into the world. Its right to be conceived in the context of a marital act has already been infringed. The unitive and procreative meanings of marriage have already been severed by *other* persons, not by the woman here.⁴

Brugger’s stated reason for saying that a woman choosing HET rescue cannot be said to have chosen either “as an end or means” anything which could implicate herself in the violation of the procreative exclusivity of marriage is *the present existence of the embryo*. Brugger seems to indicate that the fact of the embryo’s already having been created entails the cessation of the moral relevancy of the unitive and procreative meanings of marriage for this discussion.⁵

However, if the CDF's claim in *Dignitas personae* is correct, then this cannot be unequivocally the case, for according to the section cited above, a woman can choose HET for a reason which involves her in the violation of the same goods and norms that heterologous artificial procreation and surrogate motherhood violate. As we shall see in a moment, this entails the moral relevancy of the unitive and procreative goods of marriage in at least this form of HET. Thus it seems to be the case that *Dignitas personae* no longer allows one to say that the unitive and procreative meanings of marriage have been definitively rendered morally irrelevant *simply because they have already been violated by somebody else when the embryo was first created*. On the contrary, *Dignitas personae* indicates that a woman can and does violate them when she intends HET as a remedy for her or her husband's infertility.

In the text I have just cited, Brugger is clearly speaking about a woman whose remote end in choosing HET is the rescue of an embryo. Accordingly, it is still open to him to specify his claim by saying that, although the woman could choose HET for an end which infringes upon the procreative exclusivity of marriage, this particular woman does not, for her intended end is the rescue of an embryo. However, saying this, as I will argue, likewise involves the claim that the violation of such marital goods and norms as are infringed upon in heterologous IVF and surrogate motherhood lies solely in the further intention with which those acts are chosen, and not in any intrinsically disordered behavior.

In other words, it forces one into the position of saying that there is nothing intrinsically wrong, nothing *malum in se*, with heterologous IVF, but only that such an act is done with an illicit *intention* of replacing the conjugal act as the unique locus of marital procreation. This last claim must follow if both of the following are true: 1) the claim of *Dignitas personae* that illicit HET adoption is wrong for the same reasons that heterologous IVF is wrong, and 2) embryo rescue is licit because it is done for a different end. Accordingly, those who still advocate HET rescue are, I contend, now in the position of having to say that the evil of all three practices lies solely in an illicit intention and that what *alone* saves the embryo rescuer from incurring the guilt involved in heterologous IVF, surrogate motherhood, and illicit HET adoption is the remote intention to rescue, and not the intention to have a child which she would otherwise not be able to have. We shall shortly take up this argument more thoroughly.

III. *Dignitas personae*'s Reasons for Saying that HET as a Remedy for Infertility Is Illicit

We must now unpack the second reason why the passage I cited from *Dignitas personae* section 19 is significant, which is the clear and rather

grave basis upon which it says that HET as a remedy for infertility is illicit. As the text we have cited states, this form of HET is unacceptable “for the same reasons which make artificial heterologous procreation illicit as well as any form of surrogate motherhood.” Accordingly, the goods and norms violated by heterologous artificial procreation and surrogate motherhood are the same goods and norms violated by illicit HET adoption. Given that this is the case, the natural thing to ask is whether *Dignitas personae* anywhere states what exactly is wrong with artificial heterologous procreation and surrogate motherhood. The answer to this question is yes, at least with respect to the former.⁶ A few pages earlier in section 12 of *Dignitas personae*, we read the following:

With regard to the *treatment of infertility*, new medical techniques must respect three fundamental goods: a) the right to life and to physical integrity of every human being from conception to natural death; b) the unity of marriage, which means reciprocal respect for the right within marriage to become a father or mother only together with the other spouse; c) the specifically human values of sexuality which require “that the procreation of a human person be brought about as the fruit of the conjugal act specific to the love between spouses.” ...

In light of this principle, all techniques of heterologous artificial fertilization, as well as those techniques of homologous artificial fertilization which substitute for the conjugal act, are to be excluded.⁷

Thus, heterologous artificial procreation 1) fails to respect the right to life of every human being, for it subjects embryonic life to an instrumental rationality and treats it as an expendable commodity, with spare and defective embryos being discarded as no longer useful. 2) It sunders the unity of marriage within which a man and a woman are to become a father and a mother only together through one another, for the child is deliberately produced from the gametes of at least one other person besides the couple and the woman becomes pregnant not through the agency of her husband. Following upon this last point, 3) heterologous IVF replaces the conjugal act as the means by which the gift of new life is brought into the marriage. The technical procedures of a third party agent substitute for the natural conjugal union of a husband and wife.

That heterologous IVF entails all three of these moral evils seems fairly clear. That HET chosen for the purpose of remedying infertility also implicates one in these evils has been less manifest to many, and indeed, *Dignitas personae*'s claim that it does so came as a surprise to many a reader. Nevertheless, there is simply no other reasonable way to interpret the words “not ethically acceptable for the same reasons which make artificial heterologous procreation illicit.” Accordingly, to do any justice to the text, one is forced to conclude that illicit HET adoption violates the inalienable right of a husband

and wife to become a father and mother only through one another. Specifically, HET as a remedy for infertility involves a woman becoming a mother not through her husband. Consequently, illicit HET adoption constitutes a substitution of the conjugal act and is therefore “to be excluded.”⁸

In the debate surrounding HET prior to the publication of *Dignitas personae*, these were the very principles invoked by HET’s opponents as the reasons why it could not be a licit procedure. However, so far we have only been discussing *Dignitas personae*’s treatment of HET as a remedy for infertility. Perhaps the condemnation for these reasons is only true of illicit HET adoption and not of HET rescue. Could a case be made that even if HET as a remedy for infertility is to be rejected for these reasons, one could still hold that HET as a form of rescue is acceptable? What does *Dignitas personae* have to say about undertaking HET for the purpose of rescuing an embryo?

IV. *Dignitas personae*’s Treatment of HET Rescue

As we mentioned at the outset of this paper, *Dignitas personae* itself is not as explicitly clear as one would like it to be about this question. What it does say is in some way negative, but the document stops short of issuing an explicit formal condemnation of HET rescue. Here is the relevant paragraph:

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.⁹

Seemingly, the most natural and probable sense that should be given to these less than precise words is that, although HET rescue is praiseworthy with respect to the intention with which it is pursued, nevertheless it runs into the same kinds of problems that illicit HET adoption incurs, and therefore is likewise to be rejected as ethically unacceptable. The reference to “various problems not dissimilar to those mentioned above” draws one’s attention back to the paragraph just before it. The important preceding sentence reads:

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.¹⁰

My reason for italicizing the word “other” in the sentence above is to highlight the fact that the plain sense of the words indicates that what comes before the word “other” is also to be considered a problem, indeed, the central problem with HET as a remedy for infertility. Thus, the text most naturally reads something like the following: “in addition to the fundamental moral

problem that illicit HET adoption constitutes, it also leads to other problems of a medical psychological, and legal nature.”

Accordingly, when the question of HET rescue is proposed in the next sentence of the document and the document concludes that “it presents various problems not dissimilar to those mentioned above,” the most natural sense of the words are that they are *inclusive* of all of the kinds of problems that the immediately preceding sentence enumerated: moral, medical, psychological, and legal. Presumably, if *Dignitas personae* did not intend to be understood as saying that illicit HET adoption’s *main* problem is that it violates the same moral goods as heterologous IVF and surrogate motherhood, then it would not, after articulating its moral evil, have listed the medical, psychological, and legal issues surrounding it as its “other problems.” And presumably, if the document meant to exempt HET rescue from any association with the moral problem just mentioned regarding illicit HET adoption, it would not have expressed itself so generally by referring to the former as involving “various problems not dissimilar to those mentioned above.”

Nevertheless, it has to be said that the authors of *Dignitas personae* could have saved everyone a great deal of trouble and perplexity by simply stating their meaning clearly. If they had wanted to say all of this, why did they not simply do so in an unambiguous way? The failure of the document’s authors to render their moral judgments more explicitly does give one pause, and it has suggested to the proponents of HET rescue that there may still be some hope for a positive judgment on it. Perhaps there might still be a way to morally differentiate HET rescue from the morally unacceptable practice of HET as a remedy for infertility.

V. Can One Maintain the Morality of HET Rescue on Account of Its Good Intention?

If one adopts this approach, the only way to do so that looks at all plausible would be to say that the morally relevant distinction between these two forms of HET lies in the difference of intention (i.e., the remote end) on account of which the act is chosen, for the object (i.e., the proximate end) of the act is the same. Both are acts of transferring a heterologous embryo into a woman’s womb for the purpose of gestating and nurturing it until it can be safely delivered. As William May writes:

In this case the acting person is the woman; what she is choosing to do here and now—i.e., the moral object, which is also the *proximate end* of her deliberate choice—is precisely *to transfer this unborn human baby from the liquid nitrogen to her womb and to nurture it there until birth.*¹¹

May is speaking specifically, in this text, of a woman who is choosing to rescue an embryo. However, the woman who is choosing to become preg-

nant through HET because she is incapable of conceiving a child naturally is choosing that same thing. She is having a frozen embryo thawed and placed in her womb so that she can gestate the child and eventually deliver it. Her object/proximate end is no different from the woman who is intending rescue. The only difference is her further end for which she chooses this act. Both are doing the same thing, although the underlying intention motivating the act is different. Therefore, if the two acts are to receive opposite moral judgments, the reason for the difference must lie in the further intention for which a woman chooses HET.

Thus, it might perhaps be argued that the evil of illicit HET adoption lies in the fact that the couple choosing it are treating the child in a purely utilitarian fashion, as merely satisfying a desire of the woman to bear and deliver a child, whereas the HET rescuers have in mind the saving of an embryo. Thus, the latter intend something good for the life they choose to gestate, and not merely the gratification of their own desire for offspring. Accordingly, the intention of the former is bad, and therefore their choosing HET as a remedy for infertility is bad, while the intention of the latter is good, and thus their choosing HET as an act of rescue is good.

Two things need to be said in response to such a line of reasoning. First, while it is certainly true that reducing offspring to the instrumental fulfillment of one's lifestyle option is ethically unacceptable, this argument in fact proves too much. Undoubtedly, there would be something morally defective in the intention of a couple who care nothing for the embryo they choose to adopt, but only for the satisfaction of their own wants. The mentality that looks upon offspring as a commodifiable accoutrement that will complete one's ideal lifestyle is certainly a pernicious attitude. However, the force of this line of argument tells not simply against HET adoption for the infertile, but against *all* adoption for the infertile. Indeed, the presence of this attitude constitutes a defective and objectionable reproductive intention for any couple, whether fertile or infertile, or adopting or conceiving naturally.

In other words, this proposed reason for rejecting illicit HET adoption would also be a reason for rejecting regular adoption by infertile couples. It would constitute an objection to any couple which is instrumentally pursuing children as a mere means to their own selfish fulfillment. Thus, there is nothing in this suggestion of the act's immorality that is unique to a couple choosing HET as a means to overcome their infertility. But if one is to treat the sense of *Dignitas personae*'s words with any fairness, the reason for the immorality of this act needs to do precisely that. Why? Because in contrast to illicit HET adoption, *Dignitas personae* explicitly proposes traditional adoption as a way for infertile couples to overcome their infertility:

In order to come to the aid of the many infertile couples who want to have children, *adoption* should be encouraged, promoted, and facilitated by appropriate legislation so that the many children who lack parents may receive a home that will contribute to their human development.¹²

The text is clearly saying that adoption is an acceptable and licit remedy for infertility. But as we have seen, *Dignitas personae* also says that embryo adoption is *not* an acceptable and licit remedy for infertility, even though the two different forms of adoption would serve the same purpose. If the document rejects HET adoption as a means of compensating for infertility, but proposes adoption “[i]n order to come to the aid of the many infertile couples who want to have children,” then the reason for rejecting HET adoption has to be unique to it, and not something that would also be a reason for rejecting traditional adoption as well. This would seem to eliminate a defective intention that commodifies offspring as the reason why HET as a remedy for infertility is unacceptable.

This conclusion is further necessitated by following the logic of *Dignitas personae*'s stated moral equivalence between the reasons for rejecting illicit HET adoption and the reasons for rejecting heterologous IVF and surrogate motherhood. We might put that logic in the form of a disjunctive syllogism:

- 1) Because heterologous IVF and HET as a means of remedying infertility are wrong “for the same reasons,”¹³ either heterologous IVF is wrong solely because of the disordered intention (i.e., the remote end) for which it is done, or HET as a remedy for infertility is wrong on account of its object (i.e., it is intrinsically wrong), and is therefore immoral regardless of the intention for the sake of which it is done.
- 2) Heterologous IVF is wrong because it *intrinsically* violates the unitive and procreative goods of marriage, and not simply because it merely *intends* to violate those marital goods.
- 3) Therefore, HET as a remedy for infertility is wrong on account of its object, which is to say, because the act itself intrinsically violates the unitive and procreative goods of marriage, and not simply on account of a defective intention for the sake of which the act is done. The proximate end of illicit HET adoption is irreconcilable with marriage, and not simply the remote end.

Or, to put it more succinctly using more traditional scholastic terminology:

- 1) Either heterologous IVF is wrong merely because of the *finis operantis*, or illicit HET adoption is wrong because of the *finis operis*.

- 2) Heterologous IVF is not wrong merely because of the *finis operantis*.
- 3) Therefore, illicit HET adoption is wrong because of the *finis operis*.

Premise 1 simply renders explicit what is entailed by the CDF's claim in section 19. If the two acts are wrong for the same reasons, *then what makes the one wrong is specifically the same thing as what makes the other wrong*. Premise 2 simply states what every orthodox Catholic moral theologian holds. Regardless of the intention with which heterologous IVF is pursued, it is an intrinsically disordered act, for it intrudes into and replaces the exclusive and natural procreative union of a married couple as the unique locus of new life within a marriage. Thus, even if this procedure were pursued for the sincerest and noblest of motives, it would not change the moral evaluation of the act. Finally, the conclusion 3 disjunctively follows given the truth of the premises.

Now if the above disjunctive syllogism is in fact sound, then it further follows of necessity that HET rescue must also be wrong, for *it is the same act*, only done with a different remote end. Acts are specified by their objects, and, as we noted above, these acts have the same object, the same proximate end: the transfer of a frozen embryo into a woman's womb for the purpose of nurture. Accordingly, if HET as a remedy for infertility is illicit on account of its object, so also must HET rescue be. The latter would therefore similarly constitute an infringement upon the exclusive right of spouses to become a father and mother solely through each other, as well as upon the principle that married couples must actualize the procreative good within their marriage solely through a natural act of conjugal love.¹⁴

VI. *Dignitas personae*'s Unsettling Concluding Comments on the Fate of Abandoned Frozen Embryos

That such a conclusion ought to be drawn is further strengthened by the paragraph that immediately follows the text we have been discussing and concludes the document's treatment of the fate of frozen embryos. In what must be regarded as at least a troubling passage for proponents of embryo rescue, the paragraph reads:

All 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 emphasis]. Therefore [Pope] John Paul II made an "appeal to the conscience of the world's scientific authorities and in particular to doctors, that the production of human embryos be halted, taking into account that *there seems to be no morally licit solution* [emphasis added] regarding the human destiny of the thousands and thou-

sands of ‘frozen’ embryos which are and remain the subjects of essential rights and should therefore be protected by law as human persons.”¹⁵

This paragraph, particularly given its contextual location as the concluding statement in *Dignitas personae*’s discussion of the fate of frozen embryos, certainly presents difficulties for those who continue to advocate the morality of HET rescue, for the most natural and unstilted reading of these words is that there is no morally licit solution to the fate of the thousands of abandoned frozen embryos. How does one reasonably place another construction upon those words of John Paul II? And if the authors of *Dignitas personae* were not intending for the document to be read in this most obvious and unforced manner, why did they not give some indication that it is to be read in another way?

In addition to all this, however, one must add to it the broader ecclesial context of such a statement, for the text immediately calls to mind the strikingly similar passage from *Donum vitae*, which reads:

In consequence of the fact that they have been produced in vitro, those embryos which are not transferred into the body of the mother and are called “‘spare” are exposed to an absurd fate, with no possibility of their being offered safe means of survival which can be licitly pursued.¹⁶

This earlier text was an initial flashpoint in the beginning stages of the debate surrounding the morality of HET rescue. Certain moral theologians, such as Msgr. William Smith,¹⁷ saw in this text an implicit judgment against HET, inasmuch as the passage seemed to be saying of frozen embryos which are not transferred into the womb of their mother that there is “no possibility of their being offered safe means of survival which can be licitly pursued.” That text, Smith reasonably argued, seemed to entail that, being a possible way of offering a “safe means of survival” out of an otherwise “absurd fate,” HET rescue cannot “be licitly pursued.” Advocates of HET rescue replied to this line of reasoning that the authors of *Donum vitae* did not have the question of HET consciously before them, and so it would be irresponsible to read into their words an answer to a question that was not directly on their minds.

It strikes me that that response has become much less tenable in light of the apparent repetition of the same statement by the authors of *Dignitas personae*, for it seems unreasonable to assume that the Congregation, in addressing this issue, was not aware of the pivotal and controversial nature of that earlier text in *Donum vitae*. Why reiterate that highly disputed statement in the specific context of embryo rescue other than to confirm that the principle it articulates does in fact apply to this question? If the authors did not intend this to be so, surely it would constitute a grossly irresponsible choice of words.

In the hopes of placing this text in a more promising light, some advocates of HET rescue have pointed out that the original Italian is more ambiguous in its meaning. Instead of saying that this is a “situation of injustice which in fact cannot be resolved,” the Italian says literally that it is “a situation of injustice which is in fact irreparable” (*una situazione di ingiustizia di fatto irreparabile*). Thus, the text can be read in two ways, so this line of reasoning goes. The first way is the sense that the English translation conveys, namely, that there is no way out of this injustice: the unjust fate of these abandoned embryos cannot be resolved in a morally licit manner. The second way to read “irreparable” would signify that the injustice done to these embryos (inasmuch as they have been brought into being outside of a natural act of conjugal love) can never be made up for, *even if they are brought to term by being heterologously transferred*, for the transfer and adoption does not erase the evil that they were created in this way in the first place.¹⁸ Can this possibly be the meaning intended by the authors of *Dignitas personae*?

There are two problems with adopting this way of reading the text. The first is that such an understanding of the irreparable nature of injustices applies to practically every single injustice one can think of, and not just to embryos created outside of a marital act. If we are to say that an embryo which is rescued, gestated, and delivered into the arms of a loving and nurturing woman is still in a situation of injustice which is irreparable because the fact of its now having been born and adopted does not take away the original injustice done to it, then we could just as easily say that the reestablishment of marital harmony after a husband repents of adultery represents a situation of injustice that is in fact irreparable, or that a man who has lied to his best friend represents a situation of injustice which is in fact irreparable. Yes, *in some sense* it is true to say this of all three of these examples, but what could possibly be the reason for the authors of *Dignitas personae* to go out of their way to say such a thing in this context? Why make such a general, irrelevant, and highly misleading point in a discussion about whether it is morally acceptable to do something about the fate of frozen embryos? It is difficult not to interpret this way of reading the text as a kind of exegetical grasping at straws. Admittedly, the text of *Dignitas personae* in this section is needlessly convoluted. However, this approach does not seem to do any justice to the actual context of the passage.

If there were any lingering doubt, however, about how one ought to interpret the meaning of “irreparable injustice,” it strikes me that the follow-up citation quoting the words of John Paul II ought to clear up any such ambiguity.¹⁹ It is simply not reasonable to think that, if the authors of *Dignitas personae* intended their claim about the fate of frozen embryos being an irreparable injustice to be taken in the sense that, even when licitly rescued,

they are still subjects who have been done injustice, they would have cited this text. There is no such ambiguity in John Paul II's words. To be sure, the fact that the authors of *Dignitas personae* make such statements without a more explicit and formal condemnation of HET rescue engenders consternation on all sides. Nevertheless, only a stilted and highly convoluted reading of the text allows one to avoid the conclusion that creating and abandoning frozen embryos subjects them to an absurd and unjust fate that cannot be licitly resolved.

VII. Conclusion: The CDF Has at Least Implicitly Committed Itself to the Rejection of HET Rescue

I conclude here by reaffirming what I said at the beginning of this paper. My contention has been that if one adheres to the most natural and reasonable interpretation of the words of *Dignitas personae*, one is inevitably compelled, by sound practical reasoning, to conclude that HET rescue is, like HET as a remedy for infertility, a morally unacceptable procedure. One is therefore left with a stark alternative. If one continues to regard HET rescue as a licit course of action, then the CDF must be judged to be in error about its claim that HET as a remedy for infertility is wrong for the same reasons that make heterologous IVF wrong. In order for the CDF to affirm the morality of HET rescue after what it has plainly committed itself to in the text of *Dignitas personae*, it would have to reverse itself explicitly on claims made in this document.

As I said earlier, perhaps there is a stilted and highly convoluted reading that somehow leaves open the door for HET rescue. Or more radically, perhaps there are some who are willing to simply throw down the gauntlet and say that the CDF is just plain wrong about its claim regarding the moral equivalency of heterologous IVF and illicit HET adoption. However, until we hear from the CDF both that they intended a stilted and highly convoluted construction to be placed upon their words and that they have retracted their reasons for rejecting illicit HET adoption, I do not think it is reasonable to continue to affirm the morality of HET rescue. Until such a time, one can only reasonably conclude that the CDF has committed itself to certain moral judgments which implicitly commit us to the rejection of HET rescue.

References

¹ Unless otherwise noted, my use of the word "intention," following the *Catechism of the Catholic Church* (CCC), signifies the remote end chosen by the acting subject, as opposed to the proximate end which is the object specifying the act. Cf. CCC, n.

1750, “The morality of human acts depends on:

- the object chosen;
- the end in view or the intention;
- the circumstances of the action.

The object, the intention, and the circumstances make up the ‘sources,’ or constitutive elements, of the morality of human acts.”

²CDF, *Dignitas personae*, n. 19, original emphasis.

³For the purposes of this discussion, I will refer to the version of HET condemned by the CDF here as “illicit HET adoption.” Thus, I employ this latter term as a synonym for HET as a remedy for infertility. My use of the term “HET rescue” refers to an act of HET whose principal intention is the rescue of a frozen human embryo.

⁴E. Christian Brugger, “A Defense by Analogy of Heterologous Embryo Transfer,” *Human Embryo Adoption: Biotechnology, Marriage, and the Right to Life*, eds. Thomas V. Berg, L.C. and Edward J. Furton (Philadelphia, PA and Thornwood, NY: The National Catholic Bioethics Center and the Westchester Institute for Ethics and the Human Person, 2006), 200–201.

⁵Fr. Thomas Williams has similarly reasoned, “Adoptive motherhood, be it gestational or social, will never make a woman the mother of the child in a strict sense, since she did not beget the child but rather assumes responsibility for and nourishes a preexisting human being. . . . All of this leads me to the necessary conclusion that a woman who chooses to welcome an embryo into her womb provides safe harbor and nutrition for the child but does not become the child’s mother. Therefore, *Donum vitae*’s teaching (II.A.2) that the bond existing between husband and wife accords the spouses the exclusive right to become mother and father solely through each other is fully respected in the case of embryo adoption.” Thomas D. Williams, “Heterologous Embryo Transfer and the Meaning of ‘Becoming a Mother,’” in Berg and Furton, *Human Embryo Adoption*, 247–248.

⁶Surrogate motherhood is not explicitly treated in *Dignitas personae*. For the two senses of surrogacy as understood by the CDF, one must turn to *Donum vitae*: “By ‘surrogate mother’ the Instruction means: a) the woman who carries in pregnancy an embryo implanted in her uterus and who is genetically a stranger to the embryo because it has been obtained through the union of the gametes of ‘donors.’ She carries the pregnancy with a pledge to surrender the baby once it is born to the party who commissioned or made the agreement for the pregnancy. b) the woman who carries in pregnancy an embryo to whose procreation she has contributed the donation of her own ovum, fertilized through insemination with the sperm of a man other than her husband. She carries the pregnancy with a pledge to surrender the child once it is born to the party who commissioned or made the agreement for the pregnancy.” CDF, *Donum vitae*, II.A.3. While it would be fruitful to examine the ways in which surrogate motherhood violates the unitive and procreative goods of marriage, we will confine our discussion to heterologous IVF.

⁷CDF, *Dignitas personae*, n. 12, original emphasis, quoting *idem*, *Donum vitae*, II.B.4.

⁸ At first glance it might not seem that HET as a remedy for infertility bears any relevance to the first good adduced by *Dignitas personae*, namely, the right to life and to physical integrity of every human being from conception to natural death. The reason for this is that one is already dealing with existing embryos, which is to say, with life that has already been created and which one is now trying to nurture by placing it in a woman's womb. However, further reflection on the procedures almost certainly to be involved in HET suggests that a utilitarian and dehumanizing logic would still be at work. For instance, because many embryos are damaged in the freezing and thawing process, it would be tempting to thaw more than one is planning on adopting to insure that one had a healthy, intact embryo to transfer. Either refreezing or discarding these spare embryos would involve one in the same evils one sees in IVF. Even if one thawed only a single frozen embryo out of a desire to avoid this problem, it is not unlikely that that embryo will have been damaged by the freezing or thawing process but not destroyed. In such a situation, the overwhelmingly strong temptation would be to not implant it, for it would almost certainly not make it, or develop in a severely defective manner. However, if one does not follow through with the transfer, how can the conclusion be avoided that one has subjected human life to a utilitarian or pernicious "quality of life" logic and become complicit in the destruction of a human embryo?

⁹ CDF, *Dignitas personae*, n. 19.

¹⁰ *Ibid.*, emphasis added.

¹¹ William E. May, "The Object of the Acting Woman in Embryo Rescue," in Berg and Furton, *Human Embryo Adoption*, 143–144, original emphasis.

¹² CDF, *Dignitas personae*, n. 13, original emphasis.

¹³ CDF, *Dignitas personae*, n. 19.

¹⁴ For an articulation and defense of this approach, see Christopher Oleson, "The Nuptial Womb: On the Moral Significance of Being 'With Child,'" in Berg and Furton, *Human Embryo Adoption*, 165–195. See also the following in the same volume: Nicholas Tonti-Filippini, "The Embryo Rescue Debate: Impregnating Women, Ectogenesis, and Restoration from Suspended Animation," 69–114; Mary Geach, "The Female Act of Allowing an Intromission of Impregnating Kind," 251–271; and Tad Pacholczyk, "Some Moral contraindications to Embryo Adoption," 37–53.

¹⁵ CDF, *Dignitas personae*, n. 19, quoting John Paul II, Address to the participants in the Symposium on "*Evangelium vitae* and Law" and the Eleventh International Colloquium on Roman and Canon Law (May 24, 1996), 6 (*AAS* 88 [1996]: 943–944).

¹⁶ CDF, *Donum vitae*, I.5.

¹⁷ William B. Smith, "Rescue the Frozen?" *Homiletic and Pastoral Review* 96.1 (October 1995): 72–74.

¹⁸ William May, for example, writes, "The final paragraph of no. 19 declares: 'All things considered, it needs to be recognized that the thousands of abandoned embryos represent a *situation of injustice which in fact cannot be resolved.*' This is definitely true. Someone, however, might argue that this sentence implies that embryo adoption is morally wrong and for that reason its practice cannot resolve the injus-

tice that has been done to abandoned embryos. That argument would be fallacious. Even if the practice of embryo adoption were so widely accepted by upright people that no abandoned embryo was left to die, all of those embryos would have suffered an injustice not rectified by the upright people who came to their rescue, just as injustices to other victims of wrongdoing are not rectified by the efforts of upright third parties to prevent or mitigate the injuries done by wrongdoers.” William E. May, “Summary and Reflections on *Dignitas Personae*” (2009), original emphasis, <http://culture-of-life.org/content/view/536/1/>.

¹⁹ John Paul II, Address to the participants in the Symposium on “*Evangelium vitae* and Law”: “*there seems to be no morally licit solution* regarding the human destiny of the thousands and thousands of ‘frozen’ embryos.”