Heterologous embryo transfer: Magisterial answers and metaphysical questions

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The debate regarding the morality of heterologous embryo transfer (HET) as a solution for the fate of cryopreserved embryos remains active. This paper endeavors to show that the magisterial instructions on bioethical issues can only lead to the conclusion that HET is always morally illicit. I begin by showing that the text of Dignitas personae recognizes HET as a procedure accomplishing a procreative function, and I indicate that it is through gestation that this procreative function occurs. I further show that the previous Instruction, Donum vitae, implicitly points to an ontological or spiritual consideration at play during gestation. This consideration is likely related to the procreative function identified in Dignitas personae. Finally, I place these two textual arguments in the context of the debate concerning HET and conclude that metaphysical questions must be clarified in order for the immorality of HET to be understood from a suitable anthropological perspective and gain more widespread acceptance.

Keywords: Heterologous embryo transfer, Bioethics, Gestation, Procreation, Dignitas personae, Donum vitae

INTRODUCTION

Contemporary techniques of in vitro fertilization (IVF) frequently rely on the harvesting of multiple oocytes in order to generate multiple embryos. Excess embryos undergo a process of “cryopreservation” and may be thawed as needed to multiply attempts at implantation and increase the chance of a successful pregnancy. Once pregnancy occurs, or when artificial reproduction is no longer sought, left over embryos may be discarded or destroyed for use in experimental research. The bulk of these embryos, however, are maintained frozen for an indefinite period of time.

In countries that participate in IVF, hundreds of thousands of cryopreserved embryos are currently held in “concentration cans” to use the term coined by

Jerome Lejeune (1992).¹ The Church recognizes that the situation and fate of these left-over embryos present a vital moral problem. The Congregation for the Doctrine of the Faith (CDF) has addressed the ethical issues surrounding cryopreservation in its 2008 Instruction *Dignitas personae*:

Cryopreservation is *incompatible with the respect owed to human embryos*; it presupposes their production in vitro; it exposes them to the serious risk of death or physical harm, since a high percentage does not survive the process of freezing and thawing; it deprives them at least temporarily of maternal reception and gestation; it places them in a situation in which they are susceptible to further offense and manipulation. (n. 18, original emphasis)

To address this grave injustice, lay organizations have promoted the use of heterologous embryo transfer (HET), the procedure by which an embryo is thawed, re-hydrated, and placed into the womb of a woman who has volunteered to carry the pregnancy until birth, at which point the child may be kept by the gestational mother or given for adoption to other parents. According to an agency dedicated to the promotion of HET for the adoption of embryos, about 3,000 children have been born through this process in the United States, and the rate of such births appears to be increasing.²

The use of HET to care for cryopreserved embryos abandoned by their genetic parents has been a subject of controversy among Catholic ethicists.³ Opponents claim that the procedure is intrinsically immoral while supporters propose that it is licit, at least under certain conditions. In *Dignitas personae*, the CDF has ruled against the practice of HET as a remedy for infertility and has issued a warning against HET when done for the purpose of “prenatal adoption”:

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

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

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*. Therefore 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 regarding the human destiny of the thousands and thousands of ‘frozen’ embryos which are and remain the subjects of essential rights and should therefore be protected by law as human persons. (n. 19, original emphases)

While opponents of HET find support for their position in this passage, many commentators on the subject—including the US Conference of Catholic Bishops (2008)—hold that the document comes short of issuing an outright condemnation of the practice of HET in all cases, thus leaving the possibility of “prenatal adoption” open to further discussion. Some proponents of HET argue that precisely because *Dignitas personae* does not explicitly advocate against HET, one can assume that the Magisterium has taken the position that the procedure is not intrinsically immoral (see, e.g., Napier 2009; Furton 2010).

This essay will endeavor to show that the two magisterial Instructions on bioethical matters so far issued by the Vatican can only lead to the conclusion that HET is always morally illicit. I will first demonstrate that *Dignitas personae* recognizes HET as a procedure accomplishing a procreative function, and I will indicate that it is through gestation that this procreative function takes place. I will then show that the previous Instruction on bioethics, *Donum vitae*, implicitly points to a significant ontological or spiritual consideration at play during gestation. This consideration, I will argue, is related

to the procreative function identified in *Dignitas personae*. Finally, I will place these two textual arguments in the context of the debate concerning HET and will conclude that metaphysical questions must be clarified in order for the immorality of HET to be understood from a suitable anthropological perspective and gain more widespread acceptance.

DIGNITAS PERSONAE ON HET AND PROCREATION

Seeing that *Dignitas personae* n. 19 unequivocally rejects HET as a licit treatment for infertility, some ethicists have examined the reasons given by the CDF for its condemnation of the practice (i.e., “the same reasons which make artificial heterologous procreation illicit as well as any form of surrogate motherhood...”) and have concluded from their examination of those reasons that, by implication, all forms of HET are illicit (see, e.g., Gormally 2009; Oleson 2009). To arrive at this determination, however, has required ascertaining which reasons the document is precisely referring to. Enough ambiguity exists in that regard that other commentators have taken exception, concluding instead that the arguments advanced by the Magisterium to prohibit HET as a treatment for infertility leave open the possibility of promoting the “prenatal adoption” or rescue of embryos.⁴

While an analysis of the CDF’s justification for prohibiting HET in the case of sterile couples may be informative, a more edifying aspect of this passage of *Dignitas personae* rests in the identification of HET as a *treatment for infertility* in the first place. For if HET is considered *de facto* a plausible treatment for infertility, then it must be concluded that the CDF views the procedure as effectively accomplishing a procreative function—albeit imperfect

and immoral. After all, isn’t procreation what a “treatment for infertility” is supposed to bring about?

One may counter the point just made by arguing that *Dignitas personae* is prohibiting infertile couples from seeking HET on the basis of the *intention* of the would-be parents to remedy their barrenness using a means that substitutes for the marital act, and not because of any possible procreative effect of embryo transfer, especially since the medical procedure does not render a sterile couple genetically fertile (see, e.g., Napier 2009; Furton 2010, 333; Tollefsen 2010).⁵

While it is true that technically speaking, receiving a previously conceived embryo does not restore normal fecundity for sterile parents, the use of the phrase “*treatment for infertility*” in *Dignitas personae* n. 19 does convey an understanding that HET carries out a procreative function. Several reasons support this contention:

First, the CDF has already clarified in *Donum vitae* the principle by which the Church singles out remedies for infertility as illicit. After discussing the moral implication of specific treatments such as IVF and artificial insemination, the document articulates the criterion by which a procedure is to be judged:

It sometimes happens that a medical procedure technologically replaces the conjugal act in order to obtain a procreation which is neither its result nor its fruit. In this case the medical act is not, as it should be, at the service of conjugal union but rather *appropriates to itself the procreative function* and thus contradicts the dignity and the inalienable rights of the spouses and of the child to be born. (II.B.7, emphasis added)

It stands to reason that the CDF is applying this criterion in *Dignitas personae* and is thus identifying and condemning HET for sterile couples precisely for being

a practice that in some capacity “appropriates to itself the procreative function.”

Second, if HET is not to be considered *de facto* a treatment for infertility (i.e., as an act accomplishing a procreative function), then the only other possible understanding of the practice of HET for infertile couples is either as an act of adoption or as a process altogether unique that can neither be defined as adoption nor as a treatment for fertility.

In the first instance, it is neither Church practice nor common usage to refer to adoption as a “treatment for infertility” when the adopting parents happen to be unable to have children of their own. It would therefore be improbable for the Magisterium to attribute to the phrase a significance it does not normally have. Indeed, whenever the Church proposes adoption to sterile couples, she does so using terms that do not remotely convey the notion of treatment for infertility. Thus, *Donum vitae* affirms that “physical sterility in fact can be for spouses the occasion for other important services to the life of the human person, for example, adoption, various forms of educational work, and assistance to other families and to poor or handicapped children” (II.B.8). Likewise, *Dignitas personae* states that

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. (n. 13, original emphasis)

In both instructions, adoption is presented as an act of charity provided to the child, not as a remedy for the plight of the parents.⁶

In the second instance, to consider HET neither an act with procreative significance nor an act of adoption requires

defining precisely in what way the procedure violates the goods of marriage or of procreation. It is highly improbable that the Magisterium would so off-handedly deal with HET without explaining more specifically its connections to heterologous artificial procreation and surrogate motherhood, and without elaborating further on the moral considerations at stake.

Third, it would not make sense to condemn embryo transfer solely on the intention to treat infertility in one paragraph, yet in the next paragraph praise the intention of those who advocate the procedure “in order to allow human beings to be born who are otherwise condemned to destruction.” After all, seeking treatment for infertility *per se* is perfectly licit, and infertile couples engaged in HET could also very well be seeking the rescue of these embryos.

Finally, if we should indeed examine the reasons given by *Dignitas personae* to condemn HET as a treatment for infertility (i.e., “the same reasons which make artificial heterologous procreation illicit as well as any form of surrogate motherhood”), then focusing on those reasons which specifically make surrogate motherhood illicit removes the ambiguity that arises from addressing the reasons as a whole.⁷ According to *Donum vitae*, surrogate motherhood is illicit because “it is contrary to the unity of marriage and to the dignity of the procreation of the human person” (II.A.3). Given that HET used by infertile couples is not *per se* contrary to the unity of marriage,⁸ it can only be concluded that it is contrary to the dignity of the procreation of the human person.

I determine from this passage of *Dignitas personae* that the CDF condemns the practice of HET both on the intention of the infertile couple to use means of procreation that replace the conjugal act and

on the fact that HET does indeed accomplish a procreative function. This procreative function must occur through the act of gestation itself, since the object of HET is precisely a successful pregnancy. All the initial steps in HET, such as the thawing, re-hydration, examination, and selection of the embryo are directed toward a successful pregnancy carried to term and cannot, in-and-of-themselves, realize a procreative function. For example, one could not argue that the thawing or reviving of the embryo *per se* bears procreative significance since thawing without implantation and impregnation leads automatically to the embryo's death. It must be in gestation itself that *Dignitas personae* identifies the locus of a procreative function.

DONUM VITAE ON THE ABSOLUTE NECESSITY OF MATERNAL GESTATION

Support for the notion that a procreative function takes place during gestation can also be found in *Donum vitae's* treatment of artificial wombs. Commenting on how to judge procedures where embryos are manipulated in connection with "techniques of human reproduction," the document states:

Techniques of fertilization in vitro can open the way to other forms of biological and genetic manipulation of human embryos, such as attempts or plans for fertilization between human and animal gametes and the gestation of human embryos in the uterus of animals, or the hypothesis or project of constructing artificial uteruses for the human embryo. *These procedures are contrary to the human dignity proper to the embryo, and at the same time they are contrary to the right of every person to be conceived and to be born within marriage and from marriage.* (I.6, original emphasis)

Some ethicists have argued that the Church's condemnation of artificial uteruses is restricted to the context of "techniques of fertilization in vitro" (Finnis, 2009) or that it applies only to devices aimed at providing "complete ectogenesis" (Kaczor 2005, 294). But these points of view seem eisegetical since the text itself offers no reason to think that the condemnation is limited to certain circumstances. On the contrary, *Donum vitae* condemns in a radical way even the "hypothesis or project" of constructing artificial wombs.

The magisterial opposition to the idea of artificial uteruses may seem puzzling at first. Wouldn't a device designed through God-given human ingenuity and capable of potentially offering safer harbor in case of uterine illness or other catastrophe be a good to be sought rather than an evil to be shunned? Doesn't the Church already support and even applaud the use of modern incubators that provide for prematurely born babies the shelter and nourishment normally provided by the mother's womb? And couldn't artificial wombs conceivably help a married couple have children licitly and safely in case the wife has a medical condition that renders pregnancy highly risky for both mother and child?⁹

While the document does not explicate the specific reasons for its opposition to artificial wombs, it states in a subsequent passage that "The child has the right to be conceived, *carried in the womb*, brought into the world and brought up within marriage" (II.A.1; emphasis added). The promulgation of a specific right to be carried in the womb, coupled with the sweeping condemnation of artificial uteruses, implies that gestation entails more than purely physiological or material processes. The magisterial position in *Donum vitae* therefore points to an ontological or spiritual consideration at play

during gestation. It stands to reason that this consideration is related to the procreative function of pregnancy implicitly identified in *Dignitas personae*.

PROCREATIVE GESTATION: METAPHYSICAL QUESTIONS IN THE HET DEBATE

Associating gestation with procreation holds certain has metaphysical implications. This association, however, should not contradict Church teaching that “every spiritual soul is created immediately by God—it is not ‘produced’ by the parents”¹⁰ nor should it deny that “the human embryo has ... from the very beginning, the dignity proper to a person.”¹¹ With this in mind, and in light of the observations made so far in the previous two sections, it may be helpful to briefly review the debate on HET to determine if or how any additional progress can be made to clarify the issue at stake.

That pregnancy could somehow have procreative significance is germane to discussions on HET. In her opposition to the procedure, for example, Geach (2006) has equated embryo transfer to a defective form of the marital act itself (as “an intromission of an impregnating kind”). Others, such as Tonti-Filippini (2003) or Oleson (2006) have emphasized the unique intimacy of mother and child in the womb as indicating that pregnancy should only occur in the context of marriage. Pacholczyk (2006) and Althaus (2007) have perhaps been most explicit in proposing a procreative dimension for pregnancy. On the basis of the age-old Church teaching that “the primary end of marriage is the procreation and education of children” (Pius XI 1930, n. 17), Pacholczyk posited birth as a boundary signifying the end of procreation and the

beginning of education. Drawing from blessed John Paul II’s theology of the body, Althaus considered procreation in light of the “nuptial stages of life” and expressed that gestation is part of the moral continuum of the conjugal act which begins with the genital encounter and ends at birth.¹²

Proponents of HET have found the arguments advancing a procreative meaning for gestation to be conjectural and unconvincing. For them, conception marks the generation of a new human being, as determined by natural reason and attested by the Magisterium. Consequently, procreation is ended and the rules prohibiting sundering the unitive from the procreative meanings of marriage no longer apply. Thus, Williams (2006) rejects Pacholczyk’s position as implying the existence of “partially procreated children,” which represents an “absurd situation,” and further asserts that no Church document supports the notion of birth as a significant boundary in the work of procreation. Likewise, Furton (2010) expressed that Pacholczyk’s proposal implies a somewhat inferior or defective status for the embryo. Brugger (2006) argues a similar position. Along with other proponents of HET, such as Grisez (1997, 242), these ethicists view the stage of gestation as a period when the just-conceived but fully human person is nurtured and nourished until such time as he or she can survive outside the womb. Furthermore, Williams (2006) has argued against the view of procreation as a process, stating that “since being and non-being are mutually exclusive, procreation is necessarily and essentially punctual.”

Some of these objections may be addressed directly. To begin, the notion that procreation is necessarily punctual goes contrary to the common understanding of the work of creation. We can bring to mind the image of the artist toiling on

the canvas: that the masterpiece is unfinished, unnamed, or unsigned, hardly means the painting does not exist. God's initial forming of the world may indeed have been *ex nihilo*, as Williams (2006, 243) reminds us, but it still took six days before "the heavens and the earth and all their array were completed" (Gen. 2:1). Creation was neither inferior nor defective before then. And while it may be true that the Church has not explicitly commented on birth as a threshold event signifying the end of procreation, we should not ignore the divine celebration at the Nativity of our Lord, announced by the angel with the multitude of heavenly hosts. One would be hard-pressed to think of that birth as a simple milestone in biological development, as the proponents of HET would imply. The pithy Apostle's Creed also underscores that our Lord was "conceived by the Holy Spirit, *born* of the Virgin Mary," distinguishing birth as a significant moment apart from conception.

Nevertheless, it is fair to say that the notion of a procreative gestation raises more questions than it answers: what is the nature and role of this procreative process associated with gestation and what determines its completion? Does birth conclude it or does the taking of a first breath simply verify it has already been accomplished?¹³ Is pregnancy in its entirety involved in procreative activity? What are the implications from the standpoint of the human soul? Is there ongoing divine intervention?¹⁴ What role does the mother play in this procreative process? And does the father play a role?

Questions such as these present important philosophical challenges. The arguments advanced to support the idea that gestation is part of procreation require further elaboration. For one thing, it is apparent that a term as fundamental as "procreation" ought to be more explicitly defined and agreed upon with the Church

at large. If the theology of the body can serve as a strong basis from which to explore this question,¹⁵ the approach may need to be complemented by additional philosophical perspectives. Until we begin to formulate for them some answers compatible with Catholic Tradition, the moral problem of HET may continue to feel unresolved for many. Nevertheless, philosophical difficulties do not invalidate authoritative teachings on matters of ethics, however obliquely enunciated the latter may be.

CONCLUSION

The main aim of this paper has been to demonstrate that the magisterial Instructions on bioethical issues converge toward ascertaining a procreative significance to pregnancy. This procreative significance would render implantation into a woman's womb of a genetically unrelated human embryo morally illicit. The metaphysical basis for gestational procreation may need to be further clarified. Meanwhile, and unless the Church explicitly indicates otherwise, it would be prudent to refrain from pursuing or promoting HET for the rescue or adoption of cryopreserved embryos.

ENDNOTES

1. The most widely quoted figure regarding cryopreserved embryos comes from the RAND Institute which estimated their number to be around 400,000 in the United States as of April 2002 (Hoffman et al. 2003). That number has undoubtedly increased in the last decade.
2. The website for NightLight Christian Adoptions, news release, March 20, 2012, <http://www.prweb.com/releases/2012/3/prweb9304393.htm>.
3. For an overview of the major points expressed for and against the procedure, see, for example, Berg and Furton (2006) or Brakman and Fozard Weaver (2007).

4. The ambiguity comes primarily from the fact that the footnote accompanying this particular statement of *Dignitas personae*, n. 19, refers to *Donum vitae* II. A. 1–3, a large section dealing with heterologous artificial fertilization. Commentators have disagreed with Oleson and Gormally on what specific reasons within that section are being referred to (see, e.g., Brugger 2009, 483; Finnis 2009; Napier 2009, 150; Furton 2010, 329).
5. The situation For HET in this context is distinctly different from the case where IVF precedes HET.
6. Ethicists on either side of the debate have mistakenly confused this important point. By discussing adoption as a form of treatment for infertility, these commentators have found themselves obliged to distinguish between seeking adoption “for the sake of the child,” which would be permissible, as opposed to pursuing it “in a purely utilitarian fashion” or “in a way that ‘constructs’ parenthood,” which would be immoral (see, e.g., Napier 2009, 155–6; Oleson 2009, 141–2; Furton 2010, 333; Tollefsen 2010). In reality, parsing such intentions has no moral footing, just as one should not be frowned upon for desiring heaven on the basis of selfish intentions.
7. See note 4.
8. *Dignitas personae*, n. 12, defines respect for the “unity of marriage” as the “reciprocal respect for the right within marriage to become a father or mother only together with the other spouse.”
9. For example, medical professionals could harvest a licitly conceived embryo before implantation and transfer the babe to an artificial uterus that might provide safer gestation.
10. *Catechism of the Catholic Church*, n. 366.
11. *Dignitas personae*, n. 5.
12. On that particular point, Althaus also cited Asci (2002).
13. In analogy to the absence of pulse and respiration signaling that death has already occurred.
14. The psalmist proclaiming “You knit me in my mother’s womb” (Ps. 139:13) is most suggestive of a procreative gestation.
15. Proponents of the procreative significance of pregnancy commonly draw on the writings of John Paul II.

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