

# *IVF, Embryo Transfer, and Embryo Adoption*

*A Response to Repenshek and Delaquil*

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*Abstract.* An article by Mark Repenshek and a letter by Edward Delaquil published recently in *The National Catholic Bioethics Quarterly* underscore the urgent need for further moral and magisterial clarification regarding a number of highly complex and difficult bioethical issues. These involve ex utero therapeutic genomic interventions, the practice of in vitro fertilization and embryo transfer, and the ongoing debate over the morality of embryo adoption to help resolve the “absurd” fate of countless, cryopreserved human embryos. This essay critiques and argues against the use of therapeutic IVF, helps clarify why embryo transfer and embryo adoption do not violate the sacred bond of marriage, and uses key magisterial passages from both *Donum vitae* and the *Catechism of the Catholic Church* to defend the practice of embryo transfer. *National Catholic Bioethics Quarterly* 14.2 (Summer 2014): 227–234.

I would like to comment on two troublesome pieces in *The National Catholic Bioethics Quarterly* that touch upon several of the most difficult issues involving in vitro fertilization (IVF), embryo transfer, and embryo adoption.

The first was an article titled “Therapeutic Access to the Embryo: Can Therapeutic IVF Be Justified?” by Mark Repenshek in the Winter 2011 issue.<sup>1</sup> The article attempts to justify the use of “therapeutic” IVF when the circumstances focus on the genetic health of the baby.

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<sup>1</sup> Mark F. Repenshek, “Therapeutic Access to the Embryo,” *National Catholic Bioethics Quarterly* 11.4 (Winter 2011): 735–756.

The second was a letter to the editor by Edward Delaquil in the Spring 2013 issue, published under the heading “Intention in Embryo Adoption.”<sup>2</sup> Delaquil attempts to explain why the intention of an adoptive woman to save the life of a frozen embryo does not justify either embryo transfer or embryo adoption, because such an intention would per se violate the sacred bond of marriage.

Though well intentioned, both submissions are highly problematic: Repenshek proposes allowing IVF under certain circumstances, and Delaquil is strongly opposed to both embryo transfer and embryo adoption. The Church, however, teaches that IVF is intrinsically evil and, as such, can never be justified. The Church also clearly teaches that human embryos must be treated with the dignity of persons, and it currently allows the practice of embryo adoption. These are very difficult issues that must be carefully studied and assessed.

In response to Repenshek, I will respectfully try to clarify where and why his article fails to justify an exceptional use of IVF in the circumstances of the genetic health of the baby. In response to Delaquil, I wish to respectfully argue that because the biological parenthood and the adoptive parenthood of human embryos created in vitro both occur *prior* to embryo transfer and implantation, embryo transfer and embryo adoption therefore do not violate the sacred bond of marriage and are in conformity with the moral law.

Finally, I wish to faithfully present important magisterial teachings from the *Catechism of the Catholic Church* and from *Donum vitae* that appear to support both embryo transfer and embryo adoption as licit and moral procedures that are directed to the health, healing, and survival of embryos that have been illicitly and immorally conceived in vitro. It may be possible that embryo transfer could licitly provide preimplantation therapeutic access to the embryo, and that embryo adoption could save frozen embryos from an absurd fate.

### **Repenshek Advocates for IVF**

In his introductory remarks to the Winter 2011 issue of the *NCBQ*, Edward Furton, the editor in chief, provides a short summary of Repenshek’s twenty-two-page article, “Therapeutic Access to the Embryo”:

Inevitably, the advances in reproductive technologies will make it possible to correct serious genetic defects in vitro. Catholic parents who know they have a high likelihood of producing such offspring will be strongly tempted to employ IVF as a means of correcting these defects prior to implantation. Catholic teaching prohibits the use of IVF, but would an exception be possible? After exploring and setting aside two initial possibilities, Repenshek concludes with an appeal to the possibility of doctrinal development in this area, in which the Church’s teaching on IVF would remain fully intact but allow for an exceptional use when the object of the act is a baby’s genetic health.<sup>3</sup>

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<sup>2</sup> Edward Delaquil, letter, *National Catholic Bioethics Quarterly* 13.1 (Spring 2013): 17–18.

<sup>3</sup> Edward J. Furton, “In This Issue,” *National Catholic Bioethics Quarterly* 11.4 (Winter 2011): 634.

To his credit, Repenshek begins his article by addressing the obvious problem of the principle of double effect, which “is used in the Roman Catholic moral tradition to resolve dilemmas concerning human acts that bring about two effects: one good and permissible and the other evil and prohibited.”<sup>4</sup> He then explains why preimplantation therapeutic IVF *cannot* be justified by use of the principle of double effect because of two breakdowns:

1. A breakdown in *causality*, because the evil effect (IVF) *causes* the good effect (access to the embryo prior to implantation), and
2. A breakdown in *chronology*, because the evil effect (IVF) *precedes* the good effect (access to the embryo prior to implantation).

To make his case, Repenshek proposes a careful analysis of John Henry Newman’s theory of doctrinal development as put forth in *An Essay on the Development of Christian Doctrine*. Repenshek suggests that careful application of the theory might justify a therapeutic use of IVF by continuing “to recognize the original prohibition of IVF in the *circumstances of an infertile married couple* while considering the justification of IVF for preimplantation therapeutic IVF in the *circumstances of a baby’s genetic health*.”<sup>5</sup>

Repenshek’s principle argument is that preimplantation therapeutic IVF “must be viewed as an entirely different moral act” because it “considers as morally relevant not the physical evil of the infertility of the married couple but rather the genetic health of the offspring of parents who are positive for aneuploidy.”<sup>6</sup>

This statement exposes an obvious flaw in Repenshek’s logic: his arguments are completely circular. While he claims to be focused on the genetic health of the offspring, Repenshek’s entire article begins with—and ends with—solving the plight of infertile couples. He is particularly concerned about married couples who test positive for aneuploidy (an abnormal number of chromosomes), which is “a likely factor contributing to miscarriage following infertility treatment.”<sup>7</sup> Repenshek explains that not only are these infertile couples who test positive for aneuploidy suffering from the physical evil of infertility, but they have also been seeking and receiving “infertility treatment.” And if they have been suffering miscarriage following one or more infertility treatments, then, undeniably, preimplantation therapeutic IVF is just one more untried infertility treatment option for these infertile couples in their ever-growing list of tried and failed infertility treatments.

The second major error in Repenshek’s argument, and unquestionably the most serious one, is found in a quote from Pope John Paul II’s encyclical *Veritatis splendor*, which explains why some acts, such as IVF, are always intrinsically

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<sup>4</sup> Repenshek, “Therapeutic Access to the Embryo,” 741.

<sup>5</sup> *Ibid.*, 756, emphasis added.

<sup>6</sup> *Ibid.*, 755.

<sup>7</sup> *Ibid.*, 735–736, referencing research by Ruth Lathi, Lynn M. Westphal, and Amin A. Milki, “Aneuploidy in the Miscarriages of Infertile Women and the Potential Benefit of Preimplantation Genetic Diagnosis,” *Fertility and Sterility* 89.2 (February 2008): 353–357.

evil and can never be justified by ulterior intentions *or the circumstances*. While Repenshek includes this pivotal quote in his article, he does so in order to redefine the importance and the role of “circumstances” in influencing and determining the morality of a human act:

Reason attests that there are objects of the human act which are by their nature “incapable of being ordered” to God, because they radically contradict the good of the person made in his image. These are the acts which, in the Church’s moral tradition, have been termed “intrinsically evil” (*intrinsece malum*): they are such always and per se, in other words, on account of their very object, and quite apart from the ulterior intentions of the one acting and the circumstances. Consequently, without in the least denying the influence on morality exercised by circumstances and especially by intentions, the Church teaches that “there exist acts which per se and in themselves, *independently of circumstances*, are always seriously wrong by reason of their object.”<sup>8</sup>

It is highly regrettable that Repenshek attempts to reinterpret *Veritatis splendor* in order to support his argument that *circumstances* are indeed capable of *independently* turning an intrinsically evil human act (IVF) into a good and “entirely different moral act” (namely, preimplantation therapeutic IVF). This is a serious misuse of a magisterial document, not only because his misinterpretation contradicts the original, intended teaching of the encyclical, but also because he attempts to use *Veritatis splendor* to justify and defend an intrinsically evil act, namely, IVF.

This was, indeed, a very difficult article to critique, especially given Repenshek’s sincere and deep desire to use new and promising preimplantation therapeutic interventions to cure IVF-conceived embryos afflicted with genetic anomalies. I would encourage Repenshek and other concerned bioethicists to seriously consider whether preimplantation therapeutic embryo transfer could possibly be justified in order to access and cure naturally conceived embryos during the brief period of time between their natural conception and implantation. The key magisterial teachings regarding the therapeutic licitness of embryo transfer, which I explore below, may justify such an attempt.

### **Delaquil on Embryo Adoption**

In the Spring 2013 issue of the *NCBQ*, Edward Delaquil, a student at Franciscan University of Steubenville, Ohio, begins his letter to the editor by taking issue with a previous article by Edward Furton, titled “Embryo Adoption Reconsidered.” In that article, Furton had stated that embryo transfer “is a purely clinical action” and that, therefore, the insertion of an embryo into the womb of an adoptive mother “does not violate the sacred bond of marriage any more than a routine gynecological examination does.”<sup>9</sup>

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<sup>8</sup> *Ibid.*, 754–755, quoting John Paul II, *Veritatis splendor* (August 6, 1993), n. 80, Repenshek’s emphasis added.

<sup>9</sup> Edward J. Furton, “Embryo Adoption Reconsidered,” *National Catholic Bioethics Quarterly* 10.2 (Summer 2010): 338, quoted in Delaquil, letter, 17.

While Delaquil initially makes a valid observation that “the act of embryo transfer is more than a mere medical action, because it implicates the personal intentions of the patient and the doctor,”<sup>10</sup> he then proceeds to make various questionable statements regarding distinctions between clinical acts and human acts, differences between a woman “being with child” and a person “being with” an illness, whether placing a child in the womb of a woman is, or is not, “proper to the practice of medicine,” all of which is followed by a brief philosophical discussion of the per se and the per accidens ordering of human acts.<sup>11</sup>

The crux of Delaquil’s letter, and the epicenter of his various errors, is found in the following statement: “Since embryo transfer can be judged on the level of a personal act with an intention per se ordered to impregnation that is . . . outside the bond of marriage, embryo transfer can be said to violate the bond of marriage because it intentionally results in the person of the woman becoming a mother.”<sup>12</sup>

Delaquil’s main error is one that is very common: he defines impregnation as implantation. Etymologically, *impregnare* does mean “to make pregnant.” However, according to its current medical and scientific definition, “impregnate” means “to fecundate or fertilize an oocyte; to cause to conceive”; “to inseminate and make pregnant; to fertilize”; and “to inseminate; to fertilize an ovum.”<sup>13</sup> Thus, Delaquil either does not realize, or has deliberately ignored the fact, that impregnation and biological parenthood are genetically established at fertilization, not at implantation or following an embryo transfer.

In other words, impregnation scientifically occurs at the moment the mother’s ovum is fertilized by the father’s sperm. Implantation, on the other hand, scientifically happens *after* impregnation, either naturally or following embryo transfer, “occurring six or seven days after fertilization of the oocyte.”<sup>14</sup>

Why is this distinction important? Because each and every human embryo is a child from its conception. A mother is “with child” (as Delaquil emphasizes in his letter) not when the human embryo is transferred into the woman’s womb, but when it is conceived, either in the fallopian tube or in vitro. In fact, a married couple who create twenty embryos in vitro are already parents “with child” (twenty children to be exact). If three of the embryos are transferred to the mother’s womb and seventeen embryos are frozen, they are still the parents of twenty children. If none of the three transferred embryos implant, the parents will still have seventeen more embryonic children who are frozen and stored in liquid nitrogen. It is time to tell the truth: all frozen embryos are endangered children who are being treated as property instead of as persons.

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<sup>10</sup> Delaquil, letter, 17.

<sup>11</sup> See *ibid.*, 17–18.

<sup>12</sup> *Ibid.*, 18.

<sup>13</sup> The definitions are from *Stedman’s Medical Dictionary*, 28th ed., *Mosby’s Medical Dictionary*, 8th ed., and *American Heritage Medical Dictionary*, respectively, s.v. “impregnate.”

<sup>14</sup> *Dorland’s Medical Dictionary for Health Consumers*, 31st ed., s.v. “implantation.”

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.”<sup>15</sup> 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. Therefore, the adoptive parents are already the legally responsible parents of their legally adopted child(ren) *before* the embryo transfer takes place. Thus, embryo transfer is not ordered per se to “impregnation . . . outside of the bond of marriage,” but rather to saving the life of a legally adopted child by the legally responsible adoptive parents within the sacred bond of their marriage and marital life.<sup>16</sup>

Delaquil concludes his letter by stating that “if the sacred bond that is the state of the marital life is the sole relational situation designed to intentionally realize motherhood, then embryo transfer is in violation of this sacred bond.”<sup>17</sup> Delaquil may have meant that he is only opposed to embryo transfer in the case of embryo adoption, but his arbitrary and unsubstantiated conclusion does not make such a distinction. Fortunately for hundreds of thousands of currently frozen human embryos, Delaquil has failed to make his case.

### **The Magisterium on the Embryo**

On the other hand, Furton’s defense of both embryo transfer and embryo adoption in “Embryo Adoption Reconsidered” is consistent with important magisterial teachings in both the Catechism and *Donum vitae* regarding the healing, the health, and the very survival of the human embryo.

The Catechism clearly states that “one must hold as *licit* procedures carried out on the human embryo which respect the life and integrity of the embryo and do not involve disproportionate risks for it, but are directed toward *its healing, the improvement of its condition of health, or its individual survival*” (n. 2275, emphasis added). In *Donum vitae* I.3, to which this passage in the Catechism refers, the guidelines are even clearer and more detailed:

As with all medical interventions on patients, *one must uphold as licit* procedures carried out on the human embryo which respect the life and integrity of the embryo and do not involve disproportionate risks for it *but are directed towards its healing, the improvement of its condition of health, or its individual survival. Whatever the type of medical, surgical or other therapy, the free and informed consent of the parents is required, according to the deontological rules followed in the case of children.* The application of this moral principle may call for delicate and particular precautions *in the case of embryonic or foetal life.* (emphasis added)

These major magisterial statements provide the moral guidance regarding medical, surgical, and other therapies on the embryo, which implicitly include embryo

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<sup>15</sup> Delaquil, letter, 18.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

transfer. Moreover, these documents explicitly declare that all therapies on the embryo that aid in its healing and survival must be considered licit. The procedure known as embryo transfer unquestionably meets all of these criteria.

As mentioned above in *Veritatis splendor*, each and every human act has its own morality, based on the specific object of the act, the ulterior intentions, and the circumstances. Although IVF is always an intrinsically evil act, embryo transfer is an entirely separate and distinct act with its own morality.

What has been very confusing in the past—and what may still be causing much of the current confusion surrounding embryo transfer today—is that *Donum vitae* labels the entire process of in vitro fertilization as “IVF and ET,” not simply IVF, as it is commonly called. The logical reason that IVF is sometimes referred to as “IVF and ET” together is completely understandable: without embryo transfer, the embryonic children who are illicitly conceived during IVF would die. They would not be transferred into the mother’s body.

The following additional quote from *Donum vitae* further clarifies the Church’s teaching regarding the implicit morality of embryo transfer following the immoral fertilization of human embryos in vitro: “It is therefore not in conformity with the moral law deliberately to expose to death human embryos obtained ‘in vitro.’”<sup>18</sup> This important quote provides strong magisterial support for the claim that the Church teaches that “one must uphold as licit” the procedure known as embryo transfer because it is a necessary medical procedure that saves the lives of human embryos who are conceived by the intrinsically evil act of IVF.

This key teaching leads us to naturally inquire about the fate of the “left-over” frozen human embryos that are “obtained ‘in vitro’” but are not immediately transferred into the womb of the mother. It is well known that IVF clinics employ a highly illicit procedure known as cryopreservation to freeze for an indefinite period the embryos that remain after the initial “batch” are transferred into the mother’s womb. Cryopreservation is absolutely prohibited by the Catholic Church, because it violates the dignity of the human person and because it causes the death of nearly half of the embryos that are frozen.

If these “spare” frozen embryos are not transferred into the womb of their biological mother, however, and since the Church teaches that human embryos should not be deliberately exposed to death, it appears correct to infer that these embryonic children should be legally adopted and transferred into the womb of their adoptive mother. If the “leftover” frozen embryos that have been abandoned by their biological parents are not adopted and transferred, then they do indeed face the absurd fate stated in *Donum vitae*: “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.”<sup>19</sup>

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<sup>18</sup> Congregation for the Doctrine of the Faith, *Donum vitae* (February 22, 1987), I.5.

<sup>19</sup> *Ibid.*

In the past, this difficult and challenging passage has been frequently interpreted to justify opposition to both embryo transfer and to embryo adoption, but this important passage can be safely and faithfully interpreted in a way that fully endorses—as a licit and moral procedure—the transferring of any and all frozen human embryos “into the body of the mother,” whether “the body of the mother” means “the body of the biological mother” or “the body of the legal adoptive mother.” Only those frozen human embryos *that are not licitly transferred* into the body of the mother “are exposed to an absurd fate, with no possibility of their being offered safe means of survival which can be licitly pursued.” Thus, both the Catechism and *Donum vitae* appear to support embryo transfer and embryo adoption as “safe means of survival which can be licitly pursued” to save embryos from an “absurd fate.”

Any adoption, let alone embryo adoption, involves many legal, medical, emotional, and other challenges and difficulties. Those of us who have personally experienced the joys, the sorrows, and the complexities of the adoption process understand that the primary purpose of any adoption is the protection and welfare of vulnerable children who sadly may be in danger of being neglected, abused, abandoned, or even killed by their biological parent(s). Ultimately, adoption is about protecting innocent children and providing them with safe and loving families. Unwanted, abused, and abandoned frozen embryos deserve no less.

Did Mary become a mother through Joseph, her husband? No. Did Joseph become a father through Mary, his wife? No. Did the adoption of Jesus by Joseph while in the womb of Mary break or violate their sacred bond of marriage? Clearly, the answer is absolutely not. May the great mystery of the Incarnation, and God’s reassuring words to Mary and Joseph through the angel Gabriel—“Do not be afraid, Mary” (Luke 1:30) and “Joseph, son of David, do not fear to take Mary your wife (Matt. 1:20)—be for us a source of light as we seek to better understand the importance of adoption in God’s eternal plan for all of us, his beloved children by adoption.