

The Magisterial Liceity of Embryo Transfer

A Response to Charles Robertson

Elizabeth Bothamley Rex

Abstract. This article offers a detailed response to a recent article in this Journal (Winter 2014) by Charles Robertson titled “A Thomistic Analysis of Embryo Adoption.” A careful review of important terminology that is used in both *Donum vitae* and *Dignitas personae* was undertaken, and a summary is included to help define frequently misleading and even mistaken concepts and terms that can often lead to erroneous conclusions. This article focuses on *Donum vitae* I.3 and n. 2275 of the *Catechism of the Catholic Church*, which provide strong magisterial support for the liceity of embryo transfer and, ultimately, for the morality of embryo adoption as the only moral solution for “orphaned” embryos. The conclusion offers a faithful interpretation and resolution of the difficult passages in *Donum vitae* I.5 and *Dignitas personae* n. 19 regarding the magisterial liceity of both embryo transfer and embryo adoption. *National Catholic Bioethics Quarterly* 15.4 (Winter 2015): 701–722.

In an article titled “A Thomistic Analysis of Embryo Adoption” that was published in the 2014 Winter issue of the *National Catholic Bioethics Quarterly*, Charles Robertson rejects embryo adoption and condemns embryo transfer as “morally evil.”¹ Robertson mentions, comments upon, and attempts to discredit some of the arguments

Elizabeth Bothamley Rex, PhD, MBA, holds a doctorate in Thomistic ethics and is an adjunct professor of bioethics at Holy Apostles College and Seminary in Cromwell, Connecticut. The author is also the assistant director of Holy Apostles’ Saint John Paul II Bioethics Center.

¹ Charles Robertson, “A Thomistic Analysis of Embryo Adoption,” *National Catholic Bioethics Quarterly* 14.4 (Winter 2014): 673–695. Hereafter, page numbers are given in the text. All emphases in quotations from the Robertson article have been added by Dr. Rex except where otherwise noted.

made in my own essay titled “IVF, Embryo Transfer, and Embryo Adoption,” which supports embryo transfer and embryo adoption on the basis of important magisterial teachings in both the *Catechism of the Catholic Church* and the Congregation for the Doctrine of the Faith (CDF) document *Donum vitae*.² In contrast, Robertson’s article is based on his own questionable translation of a passage in *Donum vitae* II.A.2, and he offers several inaccurate arguments to support his rather misleading “Thomistic” analysis and conclusion, which focus more on the subject of embryo transfer than on the topic of embryo adoption.

Following my response to Robertson, I would like to further develop my previous comments regarding the magisterial liceity of embryo transfer as taught in *Donum vitae* and the Catechism. These important documents provide invaluable doctrinal precedence, context, and commentary that are crucial if we are to understand and faithfully resolve some of the most vexing and difficult issues regarding the morality of embryo transfer and embryo adoption. The magisterial statements in these documents support the Church’s compassionate care and concern for saving the lives of embryos conceived in vitro. They deserve to be carefully studied and included, not ignored or dismissed, in the ongoing debate over the morality of embryo transfer and embryo adoption.

A Response to Robertson

Let me begin by thanking Charles Robertson for his insightful comments on my essay. Although we are diametrically opposed on the morality of both embryo transfer and embryo adoption, we actually do agree on several issues and definitions. Here are a few of Robertson’s statements where we have managed to find common ground:

Elizabeth Rex . . . argues that embryo transfer does not make the adoptive mother pregnant at all, and so is not ordered to pregnancy apart from the marriage act. Based on the current medical definitions of impregnation as the insemination or fertilization of the ovum, she determines that a woman, that is, the egg donor, becomes pregnant prior to embryo transfer. (693)

By arguing in this vein, Rex contradicts Grabowski, Gross, and Tollefsen by equating pregnancy and conception/procreation, but fundamentally agrees with them by arguing that pregnancy itself, thus understood, occurs prior to embryo transfer. (693)

I am willing to grant certain of [Rex’s] distinctions. For instance, it is quite right to say that the natural motion of generation achieves its term at the moment of conception. . . . Consequently, the parent–child relations are established at the moment of conception, and not at some point later on. (694)

Further, in agreement with Rex, and in conformity with what was said above concerning the generation of the legal relation of adoptive parenthood, that legal relation will exist prior to embryo transfer. (694)

Rex is correct, however, to point out that pregnancy follows from the fertilization of the ovum, and so perhaps even on her view it can also be said that the

² Elizabeth Bothamley Rex, “IVF, Embryo Transfer, and Embryo Adoption,” *National Catholic Bioethics Quarterly* 14.2 (Summer 2014): 227–234.

embryo itself is the best candidate for being the proximate agent effecting pregnancy, for when the embryo comes to be, the mother becomes pregnant. (695)

This is positive and encouraging progress. We have identified areas where we can agree, and I look forward to further discussion.

In order to discuss where we disagree, it is important to first summarize Robertson's article, its stated purpose, and its major arguments. The best summary is found in his abstract:

Although two documents from the Congregation for the Doctrine of the Faith have given instruction on the moral problems of artificial reproductive technologies and the importance of respecting the lives of cryopreserved embryos, no definitive judgment has been made regarding the possibility of rescuing those embryos by means of embryo transfer into the uterus of a willing woman. This essay offers an analysis of the morality of embryo transfer in light of the ethical principles of St. Thomas Aquinas and argues that the proper use of our generative potential is only safeguarded by being restricted to marital intercourse. The arguments of those who favor the adoption model are considered and rejected in light of a Thomistic analysis of the categories of paternity, maternity, and filiation. (673)

My response to Robertson's article will be limited to three main observations: (1) Robertson's somewhat misleading title, (2) several inaccuracies mentioned in his abstract, and (3) an unfortunate error in the first sentence of his article that uses an altered quote from *Donum vitae*.

While Robertson gave his article the impressive title "Thomistic Analysis of Embryo Adoption," it is rather misleading. The real subject of Robertson's article is embryo transfer. Beginning with his abstract and the very first sentence of his article, and ending with his conclusion in the last sentence, Robertson is primarily focused on presenting arguments against embryo transfer because he strongly believes that adopting an orphaned or abandoned frozen embryo and transferring it into the womb of a woman who is biologically unrelated to the embryo violates the natural generative order between a husband and wife. Robertson's final conclusion summarizes his entire article: "I conclude, then, that embryo transfer is in itself morally evil" (695).

A closer look at Robertson's abstract confirms that his primary concern is the analysis of the morality of embryo transfer and, secondarily, that of embryo adoption. His first statement in the abstract states that "no definitive judgment has been made regarding the possibility of rescuing [cryopreserved] embryos by means of *embryo transfer* into the uterus of a willing woman" (673). The second statement in his abstract then states that his article offers "*an analysis of the morality of embryo transfer*" (673). This confirms that his article is centered on the morality of embryo transfer as, once again, there is no mention of embryo adoption. The final statement of his abstract reads, "The arguments of those who favor the adoption model are considered and rejected in light of a *Thomistic analysis of the categories of paternity, maternity, and filiation*" (673). Rather than focusing his article on a Thomistic analysis of embryo adoption, Robertson claims he will offer a Thomistic analysis of the categories of paternity, maternity, and filiation.

Robertson's abstract also mentions that his article argues that "the proper use of our generative potential is only safeguarded by being restricted to marital intercourse"

(673). This is another argument that does not apply to either embryo adoption or to embryo transfer because embryo adoption and embryo transfer are not “generative” acts. It is unfortunate that Robertson, like many others who are strongly opposed to embryo adoption, attempts to blame adoptive mothers and fathers for violating the natural generative order. These authors fail to understand—or are unwilling to admit—that the real blame belongs exclusively to the biological parents who are using in vitro fertilization (IVF). They are the ones who are gravely violating their natural “generative” potential by not restricting it to marital intercourse. It is the biological parents who (1) immorally choose not to engage in sexual intercourse in order to conceive their embryos in vitro; (2) immorally choose to freeze their “left-over” embryonic children in liquid nitrogen and thereby interrupt and contravene the natural gestation of their children within their marriage; and (3) immorally choose to abandon their “leftover” frozen embryos, which not only contravenes gestation of the embryos within marriage but actually condemns the parents’ own embryonic children to a certain death: that is, death by freezer burn and bodily corruption, death by thawing and exposure, death by deliberate disposal, or death by destructive and lethal scientific research or experimentation.

On the contrary, it is the adoptive legal parents of abused and abandoned frozen embryos who are attempting to *restore* the natural generative order that has already been gravely violated and interrupted by the biological parents who chose to disregard the Church’s teaching regarding the immorality of IVF. It is a tragic fact that countless human lives are conceived outside of marriage by men and women who knowingly and willingly choose to violate the sacredness of the marital act by committing fornication, adultery, incest, and rape, as well as IVF, surrogacy, and other immoral artificial reproductive techniques. Generative acts such as these lead to fertilization; embryo adoption and embryo transfer, however, do not lead to fertilization because, obviously, conception has already immorally occurred outside of marriage and the marital act.

Since embryo adoption and embryo transfer are *not* acts of generation and thus also do *not* violate the natural generative order as do the other immoral acts of generation mentioned above, it can be argued that embryo adoption and embryo transfer *restore* the natural generative order and allow the immorally interrupted gestation of the human embryo to morally proceed. As carefully discussed in my previous essay, both *Donum vitae* and the Catechism clearly defend the licitness of any medical procedure that is used to heal or save the lives of human embryos. Since embryo transfer is a medical procedure that saves the lives of embryos conceived during IVF, its own morality is categorically separate and distinct from the *immorality* of IVF and the other artificial reproductive techniques. These latter are immoral generative acts; embryo transfer is not.

Furthermore, as stated in his abstract, Robertson is rightly concerned about protecting “the categories of paternity, maternity, and filiation” (673). However, once again, it is simply undeniable that it is the biological parents who are directly responsible for violating “the categories of paternity, maternity, and filiation” when they immorally use IVF to conceive, freeze, abandon, and destroy their own children. Tragically, when an “unwanted pregnancy” occurs or an “unwanted frozen embryo”

is abandoned by the biological parents, these innocent unborn children are frequently aborted or destroyed. Adoption is the only way to *restore* the categories of maternity, paternity, and filiation for any abandoned child regardless of its biological stage of development.

Finally, I must comment on a very serious error that Robertson made in the first sentence of his article, in which he substantially changed the meaning of the original Latin text of *Donum vitae* II.2.A.

In a footnote to the first sentence, Robertson cites *Donum vitae* II.A.2 and provides the original text in Latin, followed by the statement that “all translations are by the author except where otherwise noted” (673). Upon a careful comparison of the Latin with the official Vatican English translation and with his translation, it becomes clear that Robertson has manipulated the text by translating the singular Latin verb *contradicit* (“is contrary”) into the plural English verb form “contradict.” Why does Robertson change the verb from singular to plural? He does so because he has added the words “embryo transfer” as an additional subject to the sentence.

Here is the original Latin text of *Donum vitae* II.A.2 that Robertson includes in his footnote. The subject is singular and the verb is in its singular third person form: “At *fecundatio artificialis heterologa* tum unitati matrimonii, tum coniugum dignitati, tum vocationi parentum propriae aperte *contradicit*, itemque iuri filii ad quem spectat ut et concipiatur et enascatur in matrimonio et per matrimonium” (673).

Here is the official English translation of *Donum vitae* II.A.2, which also has the singular subject and uses the singular verb form: “*Heterologous artificial fertilization is contrary* to the unity of marriage, to the dignity of the spouses, to the vocation proper to parents, and to the child’s right to be conceived and brought into the world in marriage and from marriage.”³

Finally, here is Robertson’s paraphrase and translation of the Latin text, in which he unaccountably adds “embryo transfer” as an additional subject in the paraphrased portion and then changes the verb form from singular to plural in the quoted portion, giving the impression that the plural subject—“heterologous artificial fertilization and embryo transfer”—appears in the original: “The Congregation for the Doctrine of the Faith, in its instruction *Donum vitae*, made the judgment that *heterologous artificial fertilization and embryo transfer* ‘clearly contradict the unity of matrimony, the dignity of the spouses, the proper vocation of the parents as well as the right of the child with a view to which it should both be conceived and brought forth in marriage and through marriage’” (673).

It is important to note that this altered sense of the passage in *Donum vitae* appears in the very first sentence of Robertson’s article, as if in an attempt to provide, from the outset, strong “magisterial” support for his entire article, which concludes with his condemnation of embryo transfer.

³ Congregation for the Doctrine of the Faith (CDF), *Donum vitae* (February 22, 1987), II.A.2. Emphases in quotations from *Donum vitae* are original unless otherwise noted.

It should also be noted that while Robertson mentions and agrees with many of the statements I made in my previous essay, he makes absolutely *no* reference whatsoever in his own article to my discussion of either *Donum vitae* I.3 or n. 2275 of the Catechism, which both provide strong magisterial support for the licitness of embryo transfer. Finally, it is undeniable that Robertson's mistranslation of *Donum vitae* II.A.2 is simply erroneous, and yet it is precisely the error that Robertson presents as "magisterial" support for his final conclusion: that is, his article's unequivocal condemnation of embryo transfer as "morally evil."

Why does Robertson add "embryo transfer" to his personal translation of this passage of *Donum vitae* when it is absent in both the original Latin text and the official English translation? A closer examination of the context in which *Donum vitae* II.A.2 is found may provide some additional insight.

Section II of *Donum vitae* is titled "Intervention upon Human Procreation" and is further divided into two major subsections: section II.A, dedicated to heterologous artificial fertilization; and section II.B, dedicated to homologous artificial fertilization. Before enquiring further, however, into why Robertson may have added the term "embryo transfer" after "heterologous artificial fertilization" in *Donum vitae* II.A.2, it is important to review and fully appreciate the major differences between the scientific terms that the CDF carefully defines in section II of *Donum vitae*:

Artificial procreation: "by 'artificial procreation' or 'artificial fertilization' are understood here the different technical procedures directed towards obtaining a human conception in a manner other than the sexual union of man and woman." Artificial procreation can be of two types:

- *Artificial fertilization* (IVF and ET): the "fertilization of an ovum in a test-tube (in vitro fertilization)."
- *Artificial insemination*: the fertilization of an ovum "through transfer into the woman's genital tracts of previously collected sperm."

Heterologous artificial procreation: "techniques used to obtain a human conception artificially by the use of gametes coming from at least one donor other than the spouses who are joined in marriage." Heterologous artificial procreation can be of two types:

- *Heterologous artificial fertilization* (IVF and ET): "the technique used to obtain a human conception through the meeting in vitro of gametes taken from at least one donor other than the two spouses joined in marriage."
- *Heterologous artificial insemination*: "the technique used to obtain a human conception through the transfer into the genital tracts of the woman of the sperm previously collected from a donor other than the husband."

Homologous artificial procreation: "the technique used to obtain a human conception using the gametes of the two spouses joined in marriage." Homologous artificial procreation can also be of two types:

- *Homologous artificial fertilization* (IVF and ET): "the technique used to obtain a human conception through the meeting in vitro of the gametes of the spouses joined in marriage."

- *Homologous artificial insemination*: “the technique used to obtain a human conception through the transfer into the genital tracts of a married woman of the sperm previously collected from her husband.”

The definitions, taken from other medical and scientific online sources, are as follows:

In vitro fertilization (IVF): “a technique of medically assisted procreation. . . . It consists of artificial fertilization performed in a test tube by combining a sperm (male gamete) and egg (female gamete).”⁴

Embryo transfer (ET): “Embryo transfer refers to the medical procedure performed in relation to assisted reproductive technology (ART). It consists of reimplanting an ovum that has been fertilized outside of the body into the uterus, once the first stages of cellular division have already initiated.”⁵

Embryo adoption (EA): the “embryo donation and adoption process involves adoption agreement and relinquishment forms, which are legal contracts between the donor and the recipient couples. These forms formalize the genetic parental relinquishment of their parental rights prior to the embryo being transferred to the receiving mother. Once transferred, the embryos belong to the adopting parents. Parties involved should also note that embryos have a special legal status that is yet to be clearly defined. While many courts are reluctant to classify embryos as property, they also do not characterize them as human beings. As a result, embryo adoption programs may differ in how they define embryos in their legal agreements. Some may refer to embryo donation as a transfer of property while others may incorporate traditional adoption language into their legal documents.”⁶

With these important definitions and distinctions now made, the official English texts of both *Donum vitae* II.A.1 and II.A.2 can be examined to further analyze Robertson’s mistranslation of *Donum vitae*. They read as follows:

Why must human procreation take place in marriage? *Every human being is always to be accepted as a gift and blessing of God. However, from the moral point of view a truly responsible procreation vis-à-vis the unborn child must be the fruit of marriage.*” (*Donum vitae* II.A.1)

Does heterologous artificial fertilization conform to the dignity of the couple and to the truth about marriage? Through IVF and ET and heterologous artificial insemination, human conception is achieved through the fusion of gametes of at least one donor other than the spouses who are united in marriage. *Heterologous artificial fertilization is contrary to the unity of marriage, to the dignity of the spouses, to the vocation proper to parents, and to the child’s right to be conceived and brought into the world in marriage and from marriage.* (*Donum vitae* II.A.2)

⁴ *CCM Health*, s.v. “in vitro fertilization,” accessed February 8, 2016, <http://health.ccm.net/>.

⁵ *Ibid.*, s.v. “embryo transfer,” accessed February 8, 2016.

⁶ “Frequent Questions: Clinics,” Embryo Adoption Awareness Center, accessed December 10, 2015, <http://www.embryoadoption.org/>.

Within this context, one can begin to see how Robertson crafted his translation of *Donum vitae* II.A.2.

Robertson chooses section A on heterologous artificial fertilization to categorize embryo transfer and embryo adoption as analogous to or even synonymous with heterologous artificial fertilization. Robertson fails to distinguish that embryo transfer and embryo adoption are two distinct acts that are entirely unrelated to the intrinsically immoral acts of both heterologous and homologous artificial fertilization. Embryo adoption and embryo transfer are acts that are aimed at healing and saving the lives of embryos who have already been immorally conceived in vitro. Robertson then merges the first two sentences of *Donum vitae* II.A.2 into a single sentence, but in doing so he changes the meaning in several significant ways.

First, Robertson actually removes any reference to *Donum vitae*'s explicit mention of IVF, which is an intrinsically evil act, while singling out and condemning ET (embryo transfer), which, according to *Donum vitae* I.3 and n. 2275 of the Catechism, is a medical procedure that the Catholic Church teaches must be considered as licit. This very serious error deserves greater scrutiny:

- The seriousness of omitting the term “IVF” from Robertson’s own translation of this passage in *Donum vitae* cannot be underestimated. This serious omission is further compounded by a second serious *commission*: Robertson substitutes “ET” for “IVF.”
- Robertson’s error, however, may be highly instructive for all of us—including Robertson himself—who have been earnestly seeking a licit solution for thousands of orphaned and abandoned embryos. Just as Robertson now agrees that impregnation is scientifically synonymous with fertilization and that impregnation scientifically precedes implantation, there is also a great need to scientifically distinguish IVF from ET. These two scientific terms require much greater clarification and comprehension.
- *Donum vitae* correctly uses the technical term “IVF and ET” when discussing what is most commonly referred to as simply IVF. On the other hand, ET is an entirely separate medical procedure that licitly remedies the intrinsically evil act of IVF.
- IVF and ET are two scientifically distinct acts, just as impregnation and implantation are two distinct acts. Without ET the newly conceived (or frozen) IVF embryo would be exposed to death. A clear moral principle that is taught in *Donum vitae* I.5 states that “it is not in conformity with the moral law deliberately to expose to death human embryos conceived in vitro.” This would explain why *Donum vitae* always includes the term ET immediately after every reference to IVF. ET prevents the death of embryos after IVF.
- This statement of principle in *Donum vitae* I.5 is immediately followed by these words: “In consequence of the fact that they have been produced in vitro, those embryos *which are not transferred* . . . are exposed to an absurd fate, with no possibility of their being offered safe means of survival which can be licitly pursued” (emphasis added). In other words, those embryos that *are not transferred* are indeed exposed to an absurd fate, while those embryos

that *are transferred* are *not exposed* to an absurd fate. Thus, *Donum vitae* I.5 is clearly implying that embryo transfer is, in fact, “a safe means of survival that can be licitly pursued.” Furthermore, it is implying that ET is the only means of survival.

- Finally, therefore, it is logical to conclude that embryo transfer (ET) is not only a licit medical procedure by which fresh and frozen IVF human embryos are licitly “transferred” into the body of the mother; it is also the *only* “safe means of survival which can be licitly pursued.” Without ET, every single human embryo conceived in vitro (whether it a fresh or a frozen embryo) would be exposed to an absurd fate and a certain death. Clearly, in light of *Donum vitae* I.3 and the magisterial licity of ET, the fullest and most faithful interpretation of *Donum vitae* I.5 undoubtedly supports ET as a safe means of survival for every single human embryo that has been immorally conceived in vitro.

In a second instance of altering the text, Robertson also inexcusably omits *Donum vitae*’s explicit reference to heterologous artificial “insemination,” which is also intrinsically evil and constitutes a form of heterologous procreation that is different from heterologous artificial “fertilization” (which is also scientifically defined as heterologous IVF and ET).

Third, he then selects *just* the term “ET” from the compound term “IVF and ET” (IVF and ET are not *synonymous* terms, as carefully defined above) and spells out “embryo transfer.”

Fourth, he adds “embryo transfer” to his quotation from *Donum vitae*, strategically placing “embryo transfer” directly behind the words “heterologous artificial fertilization.”

Finally, Robertson changes the singular verb *contradicit* to its plural form and inserts it into *Donum vitae*, thereby substantially changing its meaning by implying that “embryo transfer” is one of the subjects of the erroneous plural verb. In short, Robertson has significantly altered *Donum vitae* II.A.2 in order to manufacture “magisterial” support for his article’s conclusion that embryo transfer is “morally evil.” The only other possible explanation is that Robertson did not fully comprehend the important subtleties between the different terms that the CDF carefully defined prior to their use in section II of *Donum vitae*.

The title of Robertson’s article gives hope that he will present a deep and insightful Thomistic analysis of the morality of embryo adoption; unfortunately, that is not the case. The animating principle of Thomistic philosophy is charity, and the abandonment of a fellow human being violates that principle. Adoption, including embryo adoption, is the only *viable* and *moral* alternative for any unwanted child, no matter how it was conceived. Not a single “unwanted” unborn child should ever be aborted, and not a single “leftover” frozen embryo should ever be discarded, destroyed, or left to die by freezer burn. Adoption laws attempt to *legally* restore and reestablish “the categories of paternity, maternity and filiation” for any seriously abused, abandoned, or orphaned child, whether it is a youth, a toddler, a newborn, an unborn child, or even an embryo. The abusive biological parents of an endangered child have acted immorally, not the adoptive parents.

The Liceity of Embryo Transfer in *Donum vitae* and the *Catechism of the Catholic Church*

As previously mentioned, Robertson did agree with the scientific definitions of impregnation and implantation that were stressed in my 2014 essay. Because artificial procreation, especially IVF, is such an unnatural and complicated violation of generation on so many levels, it is not uncommon, even for scholars, to confuse the term “impregnation” with the term “implantation.” “Impregnate” does mean to “make pregnant.” However, strictly speaking, “pregnancy” begins with conception or fertilization, and occurs several days before “implantation.” The scientific definition of *impregnare* is “to inseminate; to fertilize an ovum,” an act which is then followed by *implantation* which normally occurs “six or seven days after fertilization of the oocyte.”⁷ While some ethicists have tried to equate the beginning of pregnancy with implantation, this is scientifically incorrect. Pregnancy begins with impregnation or fertilization of the ovum, which is a separate act in the process of generation that takes place either naturally following sexual intercourse or unnaturally following IVF. In both cases, however, Robertson does agree that impregnation is scientifically different from implantation and occurs prior to it.

Thus, both of us are agreed that impregnation always takes place *prior* to implantation in the uterus. This is an important distinction, because the natural “categories of maternity, paternity and filiation” are all biologically and genetically established at fertilization, or impregnation, which in turn always occurs *prior* to embryo transfer and *prior* to implantation. These terms are critically important, because the parent–child relationships are all naturally, biologically, and genetically established at fertilization, *not* at implantation. Likewise, the legal transfer of parental rights (which in many states is still inaccurately referred to as the legal transfer of *property* rights) as well as the ensuing and legally protected adoptive parent relationship also occur *prior* to embryo transfer and the implantation of the embryo in to the body of the [adoptive] mother.⁸

⁷ See Rex, “IVF, Embryo Transfer, and Embryo Adoption,” 231.

⁸ The semantic confusion introduced by IVF and by all other artificial reproductive techniques is significant and extensive. A mother whose IVF children are being kept as cryo-preserved embryos in frozen storage is still, technically speaking, “pregnant.” She is “with child,” even though her “frozen” child is not physically within her. Scientifically, pregnancy begins with fertilization, not with implantation. Fertilization and implantation are two separate and distinct biological events that are not synchronous. In a normal pregnancy, the embryo is first conceived, usually within its mother’s fallopian tube, and then descends and begins to implant in the uterus. Following a natural conception and a natural implantation, it is commonly said that the biological mother becomes “pregnant,” but her pregnancy actually began at the moment of her child’s conception in her fallopian tube and prior to its implantation in her uterus. Likewise, in the case of an embryo conceived in vitro that later implants itself in its mother’s womb following a medically assisted embryo transfer, the biological mother is commonly said to become “pregnant” once the embryo’s implantation is successful, but scientifically, her pregnancy began at the moment of her child’s conception in vitro. Similarly, in the case of embryo adoption and embryo transfer, the child’s conception has already taken place in vitro and the pregnancy has already begun. Once the frozen embryo

Though Robertson has basically agreed with these scientific definitions and distinctions, he nevertheless fails to mention my discussion of the magisterial liceity of embryo transfer under the principles laid out in both *Donum vitae* I.3 and n. 2275 of the Catechism. Given Robertson's forceful concluding statement that "embryo transfer is in itself morally evil," one must ask the obvious question: did he avoid mentioning these magisterial teachings because they do not support his position on embryo transfer?

Donum vitae was promulgated by the CDF on February 22, 1987, by its then-Prefect, Joseph Cardinal Ratzinger, later Pope Benedict XVI, during the pontificate of Pope St. John Paul II. Ten years later, on August 15, 1997, the definitive Latin typical edition of the Catechism was officially approved and promulgated by John Paul II in his apostolic letter *Laetamur magnopere*. Dated September 8, 2008, but not officially released until December 12, 2008, *Dignitas personae* was promulgated eleven years after the publication of the Catechism and more than twenty years after *Donum vitae* was released. Therefore, since both *Donum vitae* and the Catechism historically precede *Dignitas personae*, these two important magisterial documents provide valuable precedence and context for the proper understanding and interpretation of *Dignitas personae*. In fact, *Dignitas personae* clearly states in its second paragraph that the "teaching of *Donum vitae* remains completely valid, both with regard to the principles on which it is based and the moral evaluations which it expresses."⁹

Donum vitae is very appropriately subtitled "Instruction on Respect for Human Life in Its Origin and the Dignity of Procreation: Replies to Certain Questions of the Day." In *Donum vitae* I.5 the following statement is of enormous importance regarding the plight of hundreds of thousands of frozen embryos: "Every human being is to be respected for himself, and cannot be reduced in worth to a pure and simple instrument for the advantage of others. *It is therefore not in conformity with the moral law deliberately to expose to death human embryos obtained 'in vitro.'*" As discussed above, for an embryo that has been immorally created in vitro, every single option except "medically assisted" embryo transfer will "deliberately" and immorally expose it to a certain death, either by commission or by omission, which means that these options are "not in conformity with the moral law." Medically assisted embryo transfer is the only option that does not directly expose the embryo to death. Therefore, embryo transfer may be considered a licit act that is "in conformity with the moral law."

Of equal if not greater importance is the following magisterial statement that is also found in *Donum vitae* I.3:

Are therapeutic procedures carried out on the human embryo licit? As with all medical interventions on patients, *one must uphold as licit procedures carried*

has been legally adopted and is medically transferred into the adoptive mother's uterus, the immorally interrupted pregnancy is restored, and the adopted child can proceed to naturally implant itself in the womb of its adoptive mother.

⁹ CDF, *Dignitas personae* (September 8, 2008), n. 1. Hereafter, emphases in quotations from *Dignitas personae* are original unless otherwise noted.

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. (*Donum vitae* I.3)

The criteria presented by *Donum vitae* in this section are crucial for determining that embryo transfer and embryo adoption are intrinsically licit and moral. In the case of embryo adoption, the transfer of the embryo into the adoptive mother's uterus is clearly therapeutic for the adopted embryo. Embryo transfer is a medical procedure that not only respects the life and integrity of the embryo, but is "directed towards its healing, the improvement of its condition of health" and its very "survival." Although embryo transfer does involve risks, they are less than the risks and the certainty of death involved in perpetual frozen storage. Indeed, the indefinite cryopreservation of an embryo is the equivalent of a certain death sentence. Clearly, both embryo adoption and embryo transfer are aimed at the health, welfare, and very survival of an abused and abandoned frozen embryo who is in danger of death. Thus, both embryo adoption and embryo transfer meet the magisterial liceity criteria as set forth in *Donum vitae* I.3.

The text continues:

The legitimacy and criteria of such procedures have been clearly stated by Pope John Paul II: "A strictly therapeutic intervention whose explicit objective is the healing of various maladies such as those stemming from chromosomal defects will, in principle, be considered desirable, provided it is directed to the true promotion of the personal well-being of the individual [embryo or fetus] without doing harm to his integrity or worsening his conditions of life. Such an intervention would indeed fall within the logic of the Christian moral tradition."¹⁰

Although it is conceivable that therapeutic interventions on an embryo may be carried out without removing it from the uterus, the future of medicine may very well necessitate that the naturally conceived embryo be therapeutically transferred from its mother's uterus in order to have its chromosomal defect genetically repaired, and then be medically transferred back into its mother's uterus for implantation and gestation. If embryo transfer is, as Robertson claims, "morally evil," then scientific advances in the promising field of gene therapy for naturally conceived children would also have to be considered immoral.

Thus *Donum vitae* I.3 provides several very important reasons why embryo transfer must be considered a licit therapeutic medical procedure: (1) Embryo transfer is always specifically directed to "the improvement of [the embryo's] condition of health, or its individual survival," which is also true of embryo adoption. (2) Without

¹⁰ *Donum vitae*, I.3, quoting John Paul II, Discourse to the Participants in the Thirty-Fifth General Assembly of the World Medical Association (October 29, 1983).

this therapeutic medical procedure the embryo would certainly die from exposure or permanent cryopreservation. And (3) a therapeutic intervention on any embryo, whether it is conceived naturally or in vitro, may require embryo transfer as an essential part of the therapeutic intervention.

The above-mentioned magisterial statements in *Donum vitae* I.3 and I.5 help us to understand the important and radical difference between IVF, which is intrinsically evil, and ET, which is a morally licit act that respects “the life and integrity of the embryo” and is an intrinsically good and moral act because it is an act that is immediately and objectively “directed towards its healing, the improvement of its condition of health, or its individual survival.” Again, in the words of John Paul II as quoted in *Donum vitae* I.3, “such an intervention would indeed fall within the logic of the Christian moral tradition.”

These important teachings in *Donum vitae* that defend the liceity of medical procedures on human embryos are further developed in nn. 2273 to 2275 of the Catechism:

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

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

“*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, quoting *Donum vitae* I.3, emphasis added)

Robertson and others who are opposed to embryo adoption and embryo transfer must explain why these passages in the Catechism lose their validity when they condemn embryo adoption and embryo transfer as immoral; the critics cannot simply ignore or dismiss them. The inalienable human rights inherent in human life—including human embryos—do not depend on the manner in which they were conceived and brought into the world. Neither are their human rights dependent upon the decision of their genetic parents, society, or the state: they are inherent in their human nature. “As with all medical interventions on patients,”¹¹ every human embryo conceived in vitro likewise deserves to be cared for and healed as far as possible.

A careful reading of *Donum vitae* reveals additional pertinent teachings of the magisterium regarding the Church’s concern and compassionate care for the life of

¹¹ Ibid.

every single human being that is conceived, including, and perhaps especially, the highly vulnerable lives of embryos conceived in vitro.

For example, in *Donum vitae* II.A.1, under the heading “Heterologous Artificial Fertilization,” we find these magnificent and merciful words regarding every unborn child conceived in vitro by heterologous artificial fertilization: “*Every human being is always to be accepted as a gift and blessing of God.*” This passage is followed by yet another one—perhaps the magisterium’s most definitive teaching—regarding the Church’s utmost love and respect for the lives of embryos conceived in vitro. In *Donum vitae* II.B.5, under the heading “Homologous Artificial Fertilization,” the magisterium unequivocally teaches, “Although the manner in which human conception is achieved with IVF and ET cannot be approved, *every child which comes into the world must in any case be accepted as a living gift of the Divine Goodness and must be brought up with love*” (emphasis added).

A full twenty years before *Dignitas personae* was written and released, the Catholic Church was unequivocally and emphatically teaching in *Donum vitae*—the magisterial instruction that was specifically promulgated to clarify and define respect for every human life in its origin and the dignity of procreation—that “every child which comes into the world *must* in any case be accepted as a living gift of the Divine Goodness and *must* be brought up with love.” It prefaces this foundational principle with another definitive statement stating that even if a child’s “conception is achieved with IVF and ET . . . *every child which comes into the world must in any case be accepted as a living gift of the Divine Goodness and must be brought up with love*” (emphasis added).

Donum vitae also strongly condemns the cryopreservation of human embryos stating that the “freezing of embryos, even when carried out in order to preserve the life of an embryo . . . constitutes an offense against the respect due to human beings by exposing them to grave risks of death or harm to their physical integrity and depriving them, at least temporarily, of maternal shelter and gestation, thus placing them in a situation in which further offenses and manipulation are possible.”¹²

The magisterium of the Catholic Church is firmly opposed to the indefinite—and even the temporary—cryopreservation of embryos, and it has emphasized the necessity of “maternal shelter and gestation” in order to protect embryos from “death or harm to their physical integrity.” What the Church is saying is that no frozen embryo should be deprived of a maternal womb, because (1) a maternal womb provides shelter and gestation for the embryo, (2) a maternal womb protects the frozen embryo from “further offense and manipulation,” and (3) only a maternal womb can save the frozen embryo from a slow but certain death. Can anyone honestly claim that these moral principles do not encourage adoptive parents to provide that loving “maternal womb” by physically and spiritually welcoming orphaned embryos into their hearts and homes and by generously offering these abandoned children the human love, shelter, and gestation that they so desperately need in order to heal, survive, and “be brought up in love?”

¹² Ibid., I.6, emphasis added.

Finally, *Donum vitae* II unambiguously teaches that the deliberate destruction of human embryos conceived in vitro—or by any other means of artificial reproductive techniques—is “contrary to the doctrine on the illicitness of abortion.”¹³ Not only does *Donum vitae* state that embryo-destructive research is a grave violation of the Church’s teaching that condemns all procured abortions; it further states that the magisterium has “a duty to condemn the particular gravity of the voluntary destruction of human embryos obtained ‘in vitro’ for the sole purpose of research.”¹⁴

The magisterium of the Catholic Church condemns “the voluntary destruction of human embryos obtained in vitro” with “particular gravity” when it is done specifically for biomedical research because “the researcher usurps the place of God; and, even though he may be unaware of this, he sets himself up as the master of the destiny of others inasmuch as he arbitrarily chooses whom he will allow to live and whom he will send to death and kills defenceless human beings.”¹⁵

But scientific researchers are not the only ones who are usurping the place of God: it is above all the biological parents who are unquestionably the first and primary usurpers of God’s absolute dominion over the fate of each and every one of their embryos from the first moment of their conception in vitro. The grave sin of artificial reproduction has a particular gravity for biological parents because, after conceiving multiple embryos in vitro, they are the ones who are primarily responsible for choosing whether their own “leftover” embryonic children will live or die. Since the magisterium condemns cryopreservation and the voluntary destruction of embryos for the purpose of medical research with “particular gravity,” the biological parents should be willing to welcome and accept their own embryos as “a gift and blessing of God,” or allow their “spare” frozen embryonic children to be legally adopted and “brought up in love.”

The Magisterial Liceity of Embryo Transfer in *Donum vitae* I.3 Faithfully Resolves *Donum vitae* I.5

Donum vitae I.3 and n. 2275 of the Catechism provide clear magisterial support for the liceity of embryo transfer as a life-saving medical procedure because, “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 . . . are directed towards its healing, the improvement of its condition of health, or its individual survival.”

Having previously introduced both *Donum vitae* I.3 and n. 2275 of the Catechism and commented on their significance in the ongoing debate regarding the morality and liceity of embryo transfer and embryo adoption, I would finally like to explore and attempt to answer the following question: can these major magisterial passages help provide a faithful resolution to the difficulties discussed in *Donum vitae* I.5 and *Dignitas personae* n. 19?

¹³ Ibid., II.B.5.

¹⁴ Ibid., I.5.

¹⁵ Ibid.

I would like to examine the contentious last sentence of *Donum vitae* I.5 using *Donum vitae* I.3 as an important magisterial teaching that both precedes it and prepares the proper context for it. *Donum vitae* I.5 states, “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” (emphasis added).

Without changing a single word, this passage can now faithfully mean that [only] “those embryos *which are not transferred* into the body of the mother . . . are exposed to an absurd fate” (emphasis added). Such a faithful interpretation based upon the inclusion of *Donum vitae* I.3 as the truly authentic context for *Donum vitae* I.5 would appear to faithfully support two key corollaries to help clarify any previous misunderstandings or misinterpretations: (1) embryos that are transferred into the body of the mother are *not* exposed to an absurd fate, and (2) embryos that are not transferred have only one safe means of survival: licit embryo transfer.

It should be carefully noted that *Donum vitae* I.5 mentions transferring the embryos “to the body of *the* mother” (emphasis added). *Donum vitae* I.5 does *not* say to the body of the *biological* mother or to the body of the *genetic* mother. Those of us who have adopted children—and who are legally the mothers and the fathers of our [legally adopted] children—know firsthand that the laws governing the legal adoption of a child are written to protect the legal rights of the three parties involved in every legal adoption: the legal parental rights of the biological parents are terminated, the legal parental rights of the adoptive parents are established, and this transfer of parental rights is required for the sole purpose of the *legal protection and welfare of the child*. Every child—including every adopted child—can have only one legal mother at a time: it is either the biological mother or the adoptive mother. Once the biological mother’s parental rights have been terminated and the adoptive mother’s parental rights have been legally established, the adoptive mother is now the mother of the child that has been legally adopted. Adoption laws are permanent and irreversible for the protection and welfare of everyone involved in an adoption, but most specifically for the protection and for the welfare of the child involved. Once the transfer of parental rights is official and the legal adoption is finalized, an adopted child’s birth certificate can even be legally issued with the names of the child’s adoptive mother and adoptive father because the adoptive parents are now, in fact and according to the law, the child’s only parents and legal guardians. Thus, licitly transferring a frozen embryo “to the body of the mother” can refer to either the legal biological mother or to the legal adoptive mother. *Donum vitae* I.5 does not distinguish between them or exclude either one.

Therefore, if embryo transfer is indeed a licit procedure as clearly taught in *Donum vitae* I.3, then embryo transfer to the body of the adoptive mother is indeed a safe means that can be licitly pursued to avoid an absurd fate for an embryo that is not transferred to the body of its biological mother.

One could legitimately ask why *Donum vitae* did not directly recommend the possibility of allowing embryos conceived in vitro to be legally adopted and licitly “transferred into the body of the [adoptive] mother” in order to avoid being exposed

to an “absurd fate.” The answer is simple: *Donum vitae* was promulgated on February 22, 1987, nearly twelve years *prior* to the first known case of embryo adoption. Hannah Strege, who is now almost eighteen years old as of this writing, was one of four frozen embryos who were legally adopted by John and Marlene Strege and therapeutically transferred into the body of their adoptive mother. Hannah fortunately survived and was welcomed “as a living gift of Divine Goodness” by her adoptive parents when she was born on December 31, 1998. Thanks to her genetic parents and adoptive parents, Hannah was healed, saved, and “brought up with love,” just as the magisterium instructed the faithful to do twelve years earlier in *Donum vitae* II.B.5.

In 1987, embryo adoption was an utterly unknown option—perhaps even an inconceivable option—that had never happened before in the history of mankind. Even today, thousands of married couples who are longing to adopt a newborn infant have still never heard about the possibility of adopting “leftover” frozen embryos. Now that hundreds of frozen embryos have been successfully and legally adopted, sheltered, gestated, and born into loving adoptive families, this is a good time to reexamine *Donum vitae* and the Catechism, which provide clear magisterial support regarding the liceity of embryo transfer and the morality of embryo adoption, regardless of the immoral manner in which an IVF embryo may have been conceived.

Thus, both *Donum vitae* I.3 and *Donum vitae* I.5 appear to faithfully resolve the Church’s important magisterial teaching regarding the moral law that protects and defends the lives of “spare” human embryos conceived in vitro. *Donum vitae* I.3 is discussed in detail in n. 2275 of the Catechism, and it precedes and provides the proper and necessary context for *Donum vitae* I.5.

The Magisterial Liceity of Embryo Transfer in *Donum vitae* Faithfully Resolves *Dignitas personae* n. 19

I would like to apply the above-mentioned discussion of the magisterial liceity of embryo transfer found in both *Donum vitae* I.3 and I.5 to the passage in *Dignitas personae* n. 19 that directly discusses the frequently debated question regarding the morality of “prenatal adoption.”

Dignitas personae n. 19 comprises five paragraphs that are focused on answering a single burning and as yet unresolved question: what should be done with the large number of frozen embryos already in existence?

The first paragraph introduces the enormous problem regarding the fate of literally hundreds of thousands of “leftover” and abandoned frozen embryos. Laws in some countries now mandate that cryopreservation centers periodically empty their storage tanks and eliminate older frozen embryos. This is an urgent and “grave injustice,” and *Dignitas personae* n. 19 wonders “how best to respond to the duty of resolving it.”

The second and third paragraphs address the proposals of placing the spare frozen embryos at the “disposal” of researchers and doctors for the treatment of diseases and the treatment of infertility. Appropriately, *Dignitas personae* n. 19 strongly condemns both proposals as “obviously unacceptable because they treat the embryos as mere ‘biological material’ and result in their destruction.” As previously stated in *Donum vitae* I.5, “Every human being is to be respected for himself, and cannot be

reduced in worth to a pure and simple instrument for the advantage of others.” Frozen embryos are human beings who must be treated with the dignity of persons, and the magisterium strongly condemns the exploitation of frozen embryos “as disposable ‘biological material’” and prohibits their use as either a medical treatment or as a medical therapy to cure diseases or infertility in other human beings.

The third paragraph of *Dignitas personae* n. 19 also explains that the use of frozen embryos 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*” (emphasis added). Artificial heterologous procreation and surrogacy are two gravely immoral assisted reproductive techniques that are regularly used by doctors to treat infertility in married couples when one or both suffer from sterility. As explained in *Donum vitae* II.A.2, heterologous procreation involves “the fusion of gametes of at least one donor other than the spouses who are united in marriage.” If the husband is sterile, then donated sperm is used during either heterologous in vitro fertilization (IVF and ET) or in the heterologous insemination of the wife. If the wife is infertile, then the husband’s sperm is often used in artificial heterologous insemination to impregnate a surrogate woman’s ovum, or alternatively, a donor’s ovum is fertilized with the husband’s sperm using heterologous in vitro fertilization (IVF and ET), and then the embryo conceived in vitro is transferred to a surrogate woman for implantation, gestation, and birth. These forms of heterologous procreation are intrinsically evil because they are generative acts that violate the dignity of the embryo in its origin. However, embryo adoption and embryo transfer are *not* heterologous “procreation” since “procreation” has already occurred.

The third paragraph ends by warning the faithful that the practice of heterologous procreation, including the various forms of surrogate motherhood, “would also lead to other problems of a medical, psychological and legal nature.” These problems are more reasons for married couples to reject the evil practices of heterologous procreation and surrogate motherhood. But these “problems” do nothing to resolve the real problem of hundreds of thousands of cryopreserved human embryos who are still languishing in storage tanks.

It is important to note that the emphasis in the third paragraph is focused on condemning the use and abuse of frozen human embryos as an immoral “treatment for infertility,” and it offers “the same reasons” against the use of heterologous procreation methods as other “treatments for infertility.” However, there is one major difference that is not mentioned in the third paragraph. The use of frozen embryos and the use of heterologous *procreation* are not moral equivalents: the abandoned frozen embryos have already been illicitly procreated in vitro. What to do with them remains the huge question.

The fourth and fifth paragraphs of *Dignitas personae* n. 19 are of major importance and are quoted together because of their intrinsic relationship:

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.”

The fourth paragraph is a relatively easy passage to resolve. The “various problems” regarding “prenatal adoption” which are “not dissimilar” to the problems regarding heterologous procreation and surrogate motherhood refer to problems “of a medical, psychological and legal nature.” There is no similarity whatsoever, however, between the intrinsically immoral nature of artificial procreation and the intrinsically moral nature of adoption, including prenatal adoption, which *Dignitas personae* n. 19 clearly states is a proposal that is “praiseworthy with regard to the intention of respecting and defending human life.” Artificial procreation involves immoral generative acts; the adoption of an abused or orphaned child at any stage of its young life, including before its birth, is a moral and “praiseworthy” act that respects and defends human life.

There are unquestionably many medical, psychological, and legal problems that will be similar between (1) children who are conceived in vitro through the practice of heterologous procreation or the various forms of surrogacy, and (2) children who are conceived in vitro, abandoned, and *prenatally* adopted. Whether children are immorally conceived outside of marriage as the result of rape, incest, fornication, or adultery or whether children are immorally conceived outside of the marital act through the use of assisted reproductive technologies, all of these innocent children have one thing in common: they have been abused by their biological or genetic parents, who have harmed their dignity as persons by the gravely immoral manner in which they were conceived. Clearly, *Dignitas personae* n. 19 is condemning the immoral practices of artificial procreation, not the innocent children who are conceived as the result of immoral generative acts.

The fifth paragraph contains the single most difficult passage in *Dignitas personae* n. 19, which speaks of the grave injustice that is being perpetrated against hundreds of thousands of “leftover” frozen embryos and asks “how best to respond to the duty of resolving” this massive human crisis both here and all around the world. This is precisely where I would like to propose, once again, that the magisterial liceity of embryo transfer, so clearly explained in both *Donum vitae* I.3 and in n. 2275 of the Catechism, may also help to faithfully resolve this difficult passage in *Dignitas personae* n. 19, which states, “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*.”

Dignitas personae earlier acknowledged that the desire to adopt a frozen embryo represents a good intention, but cited in objection “various problems not dissimilar to those mentioned above,” that is, problems raised in connection to artificial heterologous procreation, which, therefore, are not at stake in embryo adoption, as the embryos are already in existence. The similarity between the cases concerns instead the “medical, psychological, and legal” problems connected with adoption in general,

as I noted just above, with the first of these—the medical—heightened by the unique nature of prenatal adoption.

The best interpretation of this passage, therefore, is that the thousands of abandoned embryos (now hundreds of thousands) pose a problem of such vast proportions that the injustice seems to be irresolvable, especially when we consider that embryos are still being produced in vitro and added to the current number in storage. Many of the embryos that have not already been destroyed may have suffered harm to their integrity through the passage of time and the rigors of cryopreservation. Thus the scenario, considered on a global scale, does appear to be “a situation of injustice which in fact cannot be resolved.” These thousands upon thousands of abandoned embryos do represent a situation of injustice, and all of these abandoned frozen embryos, in fact, will never receive the justice that they truly deserve because of the incalculable harm that has already been done to them. But the question posed by the CDF in the very first paragraph of *Dignitas personae* n. 19 must still be answered: “With regard to the large number of *frozen embryos already in existence* the question becomes: what to do with them?” What can be licitly done for these remaining “frozen embryos already in existence” to heal and save them from an absurd fate?

The fifth paragraph includes a major statement made by John Paul II on May 24, 1996, in an address to the participants in the Symposium on *Evangelium vitae* and the Law and the Eleventh International Colloquium on Roman and Canon Law, which poses the problem of abandoned embryos in such striking terms.¹⁶ Once again, however, this important statement was spoken by John Paul II in 1996, two years *prior* to the advent of the very first known case of frozen embryo adoption, which occurred in December of 1998 following the birth of Hannah Strege. The Pope was speaking of the situation as it existed before the first successful embryo transfer of a legally adopted frozen embryo into the womb of Marlene Strege, the embryo’s adoptive mother, using a medical procedure that “must be considered licit” as previously established in *Donum vitae* I.3 and n. 2275 of the Catechism. It is important also to note that John Paul II carefully qualified his statement and deliberately said there “seems” to be no morally licit means of resolving this situation of injustice because there simply was none at the time he spoke. It does not follow that John Paul II had ruled out the future possibility of embryo adoption. The implication that his words have this meaning is simply unwarranted. That could not be what the CDF meant when it quoted John Paul II—unless we suppose that the CDF overlooked this important fact, something that we should not presume to be true and is highly unlikely.

To the contrary, the Pope’s emphasis on what “seems” to be the case indicates that he remained open and dedicated to pursuing a morally licit resolution of this grave problem, if in justice it could be found. Now, indeed, it “seems” that embryo adoption is the obvious and morally licit solution, especially when we realize that nowhere does *Donum vitae* or *Dignitas personae* condemn either embryo adoption

¹⁶ 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), n. 6, in *AAS* 88 (1996): 943–944.

or embryo transfer as immoral, despite what certain authors, including Robertson, have repeatedly attempted to claim. In fact, *Donum vitae* implies just the opposite, namely, that embryo transfer is the only moral course in cases where the life of the embryo is at stake. Furthermore, even *Dignitas personae* nn. 13 and 18 defend and encourage adoption, passages which precede and clearly set the proper context for *Dignitas personae* n. 19. *Dignitas personae* n. 13 states, “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.” And *Dignitas personae* n. 18 states, “The majority of embryos that are not used remain ‘orphans.’ Their parents do not ask for them and at times all trace of the parents is lost.”

Adoption, I submit, is the only answer that most faithfully resolves the question of what to do with the hundreds of thousands of frozen embryos already in existence, which, as John Paul II notes, “are and remain the subjects of essential rights and should therefore be protected by law as human persons.”¹⁷

Let us always remember and deeply ponder the prescient meaning of the beautiful words of *Donum vitae* I.5 that “although the manner in which human conception is achieved with IVF and ET cannot be approved, every child which comes into the world must in any case be accepted as a living gift of the divine Goodness and must be brought up with love.” The faithful interpretation of *Dignitas personae* n.19 must clearly include renewed magisterial support for this magnificent and merciful passage in *Donum vitae* I.5 regarding the life of each and every child conceived by in vitro fertilization, including abandoned and orphaned frozen embryos.

The Only Moral Option

If the biological mother and father are unwilling to transfer, gestate, and lovingly raise their own “spare” embryos as a blessing, then the only moral option is to allow adoptive parents to legally adopt and licitly transfer these frozen “orphans”—“these living gifts of Divine Goodness”—into the bodies of their adoptive mothers, offering these abused and abandoned children conceived in vitro the “shelter and gestation” they so desperately need in order to be accepted and brought up in love as so clearly and repeatedly taught by the magisterium.

There are millions of married couples waiting to adopt an unwanted, unborn child or an unwanted, newborn child, and who would eagerly respond to the magisterium’s charitable and compassionate call to generously adopt, shelter, gestate, and “bring up in love” one or more of the thousands of unwanted “leftover” frozen embryos, the very least of all the thousands of unwanted children that already exist in the world and who have been so gravely abused, endangered, rejected, and even abandoned by their biological parents.

In concluding this article, I would like to use a quote from my previous essay:

In the past, this difficult and challenging passage has been frequently interpreted to justify opposition to both embryo transfer and to embryo adoption,

¹⁷ *Ibid.*, quoted in *Dignitas personae*, n. 19.

but [now] 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.”¹⁸

Embryo adoption, like any adoption, involves many challenges, including emotional, legal, medical, and even financial difficulties. The joys, the sorrows, and the complexities of the adoption process can perhaps only be fully understood and appreciated when they are experienced firsthand. Not everyone understands that the primary purpose of every adoption is the protection and welfare of vulnerable and defenseless children who are being neglected, abused, and abandoned and may even be in danger of being killed by their biological parents. Ultimately, adoption is all about legally protecting the lives of innocent and endangered children of all ages, including unwanted children before birth and even before implantation, by providing them with safe and loving families. Unwanted, abused, and abandoned frozen human embryos deserve no less.

¹⁸ Rex, “IVF, Embryo Transfer, and Embryo Adoption,” 234.