

Personal Relatedness and Embryo Adoption

To the Editor: In her Summer 2014 essay “IVF, Embryo Transfer, and Embryo Adoption: A Response to Repenshek and Delaquil,” Elizabeth Rex is correct that embryos prior to transfer are already children; as such, embryo transfer need not violate the goods of marriage.¹ Furthermore, she correctly notes that these children “are being treated as property instead of as persons.”² According to Karol Wojtyła, “the personal order is the only proper plane for all debate on matters of sexual morality.”³ By extension, the personal order is also the only proper plane for resolving debates about embryo adoption.

Unfortunately, Rex does not engage the personal meaning of the human bodies involved in embryo adoption. Edward Delaquil is onto something when he says that the personhood of the woman is “constitutively implicated.”⁴ Yet embryo adoption is not problematic because it necessarily violates the bond of marriage and the exclusive bodily relationship of spouses, but because it violates the exclusive bodily relationship of biological mother and child. Incommunicability is the premier attribute of persons and refers to that which cannot be shared. There are certain personal relationships that reflect this exclusivity, such as when the personal giving is *total* and so includes the union of bodies, as in marriage. Pregnancy is another relationship of total personal giving involving the union of bodies, this time of the mother and the child, and it therefore invokes the incommunicable exclusivity of personal relationality; this is why *Donum vitae* refers to the right of the child to be “carried in the

womb” of its mother.⁵ The rescuer in embryo adoption enters into a bodily union with the embryo that is meant only for its mother. Bodies may be distinguished from persons, but never divided from persons. The lack of bodily relatedness in embryo adoption is a *specifying circumstance* that changes the moral species of the act. As husband and wife are not substitutable in their bodily union, neither are biological mother and child.

As to invoking the Incarnation in favor of embryo adoption, I think it argues against it. First of all, the Incarnation is an example of impregnation in the sense of conception (albeit miraculous), not implantation, as Rex is so careful to distinguish. Secondly, the Incarnation is an example of the most *exclusive* pregnancy of all time, so much so that it is a matter of dogma that Mary remained a Virgin. Christ was not another woman’s embryo that Mary rescued, and no other child could ever occupy her holy womb, based upon the radical incommunicability of interpersonal relationality founded on personhood, not nature. God chose Mary as person from all eternity to enter into the mysterious bodily union of pregnancy, and no other woman could ever have fulfilled this role. The dogma of Mary as Mother of God hinges precisely on this incommunicable interpersonal relationality, as she was not just the mother of a nature, but of a Person.

Regarding *Donum vitae*’s famous reference to the absurd fate of “spare” in vitro embryos not transferred into the body of the mother, Rex interpolates the word “licitly” after “not” and before “transferred” in a new formulation which justifies embryo adoption.⁶ Yet *Dignitas personae* states that abandoned embryos represent “a *situation of injustice which in*

fact cannot be resolved” and to which there seems to be “no morally licit solution.”⁷ “It is clear that *Dignitas personae* does not support embryo adoption.”⁸ Accordingly, it is difficult to fathom how, in a few short years, the plain meaning of this recent instruction from the Congregation for the Doctrine of the Faith has been reinterpreted as ecclesiastical permission for embryo adoption.

It seems that rationales are facilely forthcoming when it comes to transforming the possible to the permissible to the preemptory in the dynamic world of bioethics.

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¹ Elizabeth B. Rex, “IVF, Embryo Transfer, and Embryo Adoption: A Response to Repenshek and Delaquil,” *National Catholic Bioethics Quarterly* 14.2 (Summer 2014): 228.

² *Ibid.*, 231.

³ Karol Wojtyła, *Love and Responsibility*, rev. ed. (New York: Farrar, Strauss, and Giroux, 1981), 18.

⁴ Edward Delaquil, letter, *National Catholic Bioethics Quarterly* 13.1 (Spring 2013): 18.

⁵ Congregation for the Doctrine of the Faith (CDF), *Donum vitae* (February 22, 1987), II.A.3.

⁶ Rex, “IVF, Embryo Transfer, and Embryo Adoption,” 234.

⁷ CDF, *Dignitas personae* (September 8, 2008), n. 19, original emphasis.

⁸ John S. Grabowski and Christopher Gross, “*Dignitas personae* and the Adoption of Frozen Embryos: A New Chill Factor?,” *National Catholic Bioethics Quarterly* 10.2 (Summer 2010): 327.

there are many points on which I would agree with Professor Jones, I found a number of his points open to challenge:

1. In explaining the levels of Church teaching based on *Lumen Gentium* n. 25, Jones seems to place *de fide* teachings of the ordinary and universal magisterium in “second place” after doctrines solemnly defined by a pope or an ecumenical council.³ The 1989 Profession of Faith, however, recognizes that some doctrines “set forth” (*proponuntur*) by the ordinary and universal magisterium can be on the same level as doctrines that are solemnly defined.⁴ This is clear from the wording of the Profession: “With firm faith, I also believe everything contained in the Word of God, whether written or handed down in Tradition, which the Church, either by a solemn judgment or by the ordinary and universal Magisterium, sets forth [*proponuntur*] to be believed as divinely revealed.”⁵ Teachings of the ordinary and universal magisterium, therefore, are not “second place” infallible pronouncements. A careful reading of *Lumen Gentium* n. 25 and the First Vatican Council’s *Dei Filius*, chapter 3, shows that doctrines taught by the ordinary and universal magisterium can be set forth as revealed by God.⁶ Two examples of such doctrines would be the existence of angels and the perpetual virginity of Mary.

2. Jones states that ordinary teachings of the magisterium “are not infallible or unchangeable but express the faith in a particular time and place.”⁷ He is correct that such teachings are not per se unchangeable, but it can be misleading to describe them as “not infallible.” This is because a teaching that is true is without error (i.e., is infallible). It could happen that some teachings of the ordinary magisterium might be recognized as infallibly certain at a later point of theological development. This is why the Congregation for the Doctrine of the Faith (CDF), in its 1990 instruction *Donum veritatis*, speaks of matters “per se not irreformable”⁸ rather than of matters that “are not infallible.” The wording is significant because when authoritative teachings of the ordinary magisterium are described as “not infallible,” it gives the impression that all of them are subject to

On the Authority of Prior Magisterial Judgments

To the Editor: In his Spring 2014 article “Magisterial Teaching on Vital Conflicts: A Reply to Rev. Kevin Flannery, SJ,” David Albert Jones offers some interesting and important insights on how to assess the authority of prior magisterial teachings.¹ He argues that “appeal to former magisterial teaching is not sufficient to settle the contemporary debate over what constitutes direct abortion.”² While

change, which is not true in every case. The CDF, in *Donum veritatis* n. 24, acknowledges that “some Magisterial documents might not be free from all deficiencies.” It immediately adds, however, that “it would be contrary to the truth, if, proceeding from some particular cases, one were to conclude that the Church’s magisterium can be habitually mistaken in its prudential judgments, or that it does not enjoy divine assistance in the integral exercise of its mission.”

3. Unfortunately, Professor Jones seems to slip into the very attitude that the CDF warned against in *Donum veritatis* n. 24. He is correct about the importance of the historical context of prior magisterial statements, but he appears to take the exception as a rule. In other words, he maintains that because *some* prior magisterial judgments have received subsequent ecclesial qualification, it follows that *no* prior ordinary magisterial judgments can be cited as authoritative. Thus, in footnote 92 of his article, he tries to undercut the appeal of Marie Anderson et al. to the rulings of the Holy See in 1884 and 1889 against craniotomy in their criticisms of Fr. Martin Rhonheimer’s moral justification of the procedure. His argument is that what *Donum veritatis* n. 24 teaches about the need for submission to ordinary magisterial judgments must be balanced by the document’s equal recognition of the need for sensitivity to historical context. I was one of Dr. Anderson’s coauthors for the original Spring 2011 *NCBQ* article criticizing Rhonheimer as well as the letters that followed.⁹ In these letters, however, we commended Fr. Rhonheimer for submitting his writings to the CDF, and we made it clear that “it is up to the CDF, not us, to decide whether [his criticisms of the 1884 and 1889 decrees] constitutes infidelity to magisterial teaching.”¹⁰ We also admitted that it was possible that the CDF could issue a qualification of the 1884 and 1889 decrees, but we argued that this was highly unlikely “since craniotomies have been rendered virtually obsolete by the development of caesarean sections.”¹¹ In this last point, we manifested an awareness of the historical context, which Professor Jones believes is so critically important.

4. The issue is not whether attention should be given to the historical context of prior magisterial judgments but whether the historical context is relevant to the authority of any given magisterial judgment today. In some cases, the historical context is relevant; in other cases it is not. How, though, do we determine if earlier magisterial judgments are still authoritative? I would suggest this as the rule to follow: unless the magisterium itself qualifies a prior judgment or teaching—as in the 2001 note of the CDF regarding the 1887 censures of Fr. Antonio Rosmini¹²—“the willingness to submit loyally to the teaching of the magisterium on matters per se not irreformable must be the rule” (*Donum veritatis*, n. 24). There is also the need “to assess accurately the authoritativeness of the interventions which becomes clear from the nature of the documents, the insistence with which a teaching is repeated, and the very way it is presented.”¹³ With regard to the 1887 censures of Rosmini, these only concerned certain philosophical propositions. They did not touch upon Rosmini’s theological and spiritual writings. Indeed, the Italian thinker was greatly admired by Pope St. John XXIII and Bl. Pope Paul VI.¹⁴ When Pope St. John Paul II agreed to open the cause for Rosmini’s beatification in 1994, a reassessment of the 1887 censures was necessary.

5. The 1884 and 1889 rulings of the Holy See against craniotomy have never been rescinded or qualified. They, therefore, still carry authority. In other words, Catholic theologians should manifest religious submission of will and intellect to the 1884 and 1889 rulings of the Holy See against craniotomy unless and until the magisterium says otherwise. Of course, these rulings need to be properly understood and assessed, and this is why we criticized Fr. Rhonheimer for obscuring the true meaning of these rulings based on an improper translation of the Latin phrase *tuto doceri non posse*, which he understood to mean “it could not be taught as certain” instead of “it cannot be safely taught.”¹⁵ Our objection to Rhonheimer’s defense of craniotomy, however, was not merely an appeal to the authority of the 1884 and 1889 rulings of the Holy Office. Both in our article and

in our Winter 2011 letter, we made it clear that the moral principle behind the 1884 and 1889 rulings was more important, namely, that one may never directly kill an innocent human being. This principle is not limited only to these rulings against craniotomy. It is a principle that has been reaffirmed in numerous magisterial documents, especially *Evangelium vitae* nn. 57 and 62.

6. Jones notes that magisterial condemnations of abortion only apply to “direct abortion” and “direct killing.”¹⁶ He believes reasonable doubts can be raised as to whether all acts that lead to the death of an unborn child—for example, craniotomy, *acceleratio partus* [acceleration of birth], and the use of methotrexate—involve direct killing. Moreover, he notes that ethicists such as Rhonheimer and Germain Grisez have argued in favor of the moral legitimacy of craniotomy with full magisterial knowledge, and a 1993 work of Grisez, which upholds this position on craniotomy, received an *imprimatur* that has never been withdrawn.¹⁷ On the surface, this seems to be a strong argument against the authority of the 1884 and 1889 rulings rejecting craniotomy. But permission to publish or raise questions about prior magisterial teachings does not mean those teachings no longer remain authoritative. On February 20, 2014, Cardinal Walter Kasper, with full permission of Pope Francis, gave a speech before an extraordinary consistory of cardinals at the Vatican in which he argued in favor of a change in Church teaching regarding the reception of Holy Communion by divorced and remarried Catholics.¹⁸ The fact that the Holy Father gave permission to Cardinal Kasper to deliver and later publish this speech does not mean that what the Church teaches in *Familiaris consortio* n. 84 and the *Catechism of the Catholic Church* n. 1650 against the reception of Holy Communion by divorced and remarried Catholics no longer carries authority.¹⁹

Sometimes the Church allows questions to be raised regarding difficulties with prior magisterial teachings. This was certainly the case with the so-called birth-control commission prior to the issuance of Paul VI’s 1968 encyclical *Humanae vitae*. In 1952, the

German physician Albert Mitterer published a book challenging the Church’s traditional understanding of Mary’s *virginitas in partu* (virginity in childbirth).²⁰ Even though this book carried an *imprimatur* by the Vicar General of the Diocese of Bolzano-Brixen (Bolzano-Bressanone), it did not mean that prior magisterial teachings upholding Mary’s virginity in giving birth no longer had authority. Indeed, the Holy Office in 1960 issued a *monitum* forbidding any publications questioning the Church’s traditional doctrine on Mary’s *virginitas in partu*, and Vatican II, in *Lumen gentium* n. 57, affirmed the traditional teaching.²¹ Professor Jones admits that “the methodologies and the particular conclusions of Grisez and of Rhonheimer may yet be shown to be deficient through theological discussion or in a subsequent intervention of the magisterium.”²² He and I are in perfect agreement on this point. We differ, however, on the propriety of invoking the authority of prior magisterial judgments. As I have argued above, the 1884 and 1889 rulings of the Holy See against craniotomy remain authoritative even if the magisterium has given permission for works raising questions about aspects of these rulings to be published.

It is important to note that *Donum veritatis* n. 30 admits that difficulties with a particular magisterial teaching might persist “despite a loyal effort on the theologian’s part.” In such cases, “the theologian has the duty to make known to the magisterial authorities the problems raised by the teaching in itself, in the arguments proposed to justify it, or even in the manner in which it is presented.” The CDF does not specify the procedure for making known these difficulties. One way, though, might be writing articles or books that raise questions or difficulties about certain magisterial teachings in a spirit of loyal submission to the authority of the magisterium. The questions raised by Rhonheimer and Grisez regarding the Church’s prior rulings against craniotomy can be understood in this light, especially because both have always expressed a willingness to submit their judgments to the Holy See.

Jones’ position, though, seems to undercut any appeal to the authority of prior judgments

of the ordinary magisterium because of historical context. But what the CDF says in *Donum veritatis* n. 24 deserves repeating: “It would be contrary to the truth, if, proceeding from some particular cases, one were to conclude that the Church’s magisterium can be habitually mistaken in its prudential judgments, or that it does not enjoy divine assistance in the integral exercise of its mission.” It is one thing to raise critical questions regarding the 1884 and 1889 craniotomy decrees, it is something else to dismiss their authority altogether via a generalized rule of “historical context.”

7. Other assertions made by Jones are also open to challenge. He claims that a *prima facie* reading of the Holy See’s decrees of 1898 and 1902 “would also rule out salpingectomy and other procedures that enjoyed widespread support among Catholic moral theologians even in the 1930s.”²³ The decrees of 1898 and 1902, however, only addressed the direct removal of the fetus from the mother’s womb not the removal of all or part of an organ of her body that is in a pathological condition.²⁴ A *prima facie* reading of these decrees would rule out a salpingostomy or the administration of methotrexate for the resolution of an ectopic pregnancy but not necessarily a salpingectomy. Once again, it is important to assess accurately the purpose and the scope of prior magisterial documents.

Jones also argues that Pope Pius XII’s November 26, 1951 Address to the Association of Large Families cannot be applied in support of a salpingectomy but only in support of interventions addressing critical pathologies that are independent of the condition of pregnancy (e.g., a cancerous womb of the pregnant mother).²⁵ Here, though, Jones takes an example provided by Pius XII as a norm. In his November 26, 1951 speech, Pius XII does not say that the intervention *must* address a pathology that is independent of the condition of pregnancy, he merely gives this as a hypothetical example (“If, for example” or in the Italian: *Poichè se, per esempio*).²⁶ Moral theologians see such interventions as applications of the principle of double effect. As we argued in our Spring 2011 article, recourse to a salpingectomy to resolve an

ectopic pregnancy can be justified according to the principle of double effect, a principle that also informs the example given by Pius XII in his November 26, 1951 speech.

By way of conclusion, I wish to thank Professor Jones for the important issues raised in his Spring 2014 *NCBQ* article. He is correct that theologians need to give attention to the historical conditions surrounding prior magisterial documents. He is also correct that philosophical and theological arguments need to be given when discussing moral issues and not simply appeals to the authority of prior magisterial documents. Theologians, though, should not dismiss or obscure the authority of prior magisterial judgments because of a generalized principle of historical context. In some cases the historical context is important; in other cases it is not. Careful attention should always be given to the purpose and scope of prior magisterial statements, and to whether the magisterium has continued to affirm the moral principles that informed these earlier judgments.

It is ultimately up to the magisterium, not private theologians, to determine whether and how prior magisterial teachings apply to the present. With respect to the 1884 and 1889 decrees against craniotomy, my colleagues and I argued that the moral principles behind these decrees still apply today. Toleration by the magisterium of publications expressing alternate views on craniotomy does not mean that the 1884 and 1889 decrees no longer have authority, and still less does it obscure the moral principles within these decrees. The burden is on theologians to explain how craniotomy does not violate the Church’s clear prohibition of “any surgical operation whatsoever that directly kills the fetus or the pregnant mother.”²⁷ Likewise, the burden is on the theologians to explain how the direct removal or destruction of an embryo in the fallopian tube is not a direct attack on the life of an innocent human being. In our Spring 2011 article, my colleagues and I argued that Rhonheimer and others have *not* made a convincing case for recourse to salpingostomy or methotrexate for resolving ectopic pregnancies. At the end of our article, we appealed to the Holy See to offer clear guidance on

this issue. This is because it is up to the magisterium, and not private theologians, to determine how the moral principles taught in the past apply to moral issues of today.

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¹ David Albert Jones, "Magisterial Teaching on Vital Conflicts: A Reply to Rev. Kevin Flannery, SJ," *National Catholic Bioethics Quarterly* 14.1 (Spring 2014): 81–104.

² *Ibid.*, 81.

³ *Ibid.*, 83, on Vatican Council II, *Lumen Gentium* (November 21, 1964), n. 25.

⁴ Congregation for the Doctrine of the Faith, *Profession of Faith* (January 9, 1989).

⁵ *Ibid.*

⁶ See Vatican Council I, *Dei Filius*, in Heinrich Denzinger, *Enchiridion symbolorum, definitionum et declarationum de rebus fidei et morum*, 43rd ed., ed. Peter Hünermann (Freiburg, Germany: Herder, 2010), 3011, henceforth referred to as DH.

⁷ Jones, "Magisterial Teaching on Vital Conflicts," 83.

⁸ CDF, *Donum veritatis* (May 24, 1990), n. 24.

⁹ For the original article, see Marie A. Anderson et al., "Ectopic Pregnancy and Catholic Morality: A Response to Recent Arguments in Favor of Salpingostomy and Methotrexate," *National Catholic Bioethics Quarterly* 11.1 (Spring 2011): 65–82. The letters from Anderson et al. appeared in the Summer 2011 issue (208–211) and Winter 2011 issue (630–631).

¹⁰ Anderson et al., letter, Winter 2011, 630.

¹¹ *Ibid.*

¹² CDF, *Note on the Force of the Doctrinal Decrees concerning the Thought and Work of Fr. Antonio Rosmini Serbati* (July 1, 2001).

¹³ CDF, *Donum veritatis*, n. 24. Compare with Vatican Council II, *Lumen Gentium*, n. 25.

¹⁴ See Robert L. Fastiggi, "Rosmini-Serbati, Antonio (1797–1855)," in *Encyclopedia of Catholic Social Thought, Social Science, and Social Policy*, vol. 2, ed. Michael L. Coulter et al. (Lanham, MD: Scarecrow Press, 2007), 922–924.

¹⁵ Vatican Council I, *Dei Filius*, DH 3258; see Anderson et al., "Ectopic Pregnancy and Catholic Morality," 75–76.

¹⁶ Jones, "Magisterial Teaching on Vital Conflicts," 95.

¹⁷ See Germain G. Grisez, *The Way of the Lord Jesus*, vol. 2, *Living a Christian Life* (Chicago, IL: Franciscan Herald Press, 1993), 8B. This work received a *nihil obstat* from Rev. Kevin T. McMahon, STD, and an *imprimatur* from James Cardinal Hickey, Archbishop of Washington, DC, on November 16, 1992.

¹⁸ This address has since been published and is available in English in Cardinal Walter Kasper, *The Gospel of the Family* (Mahwah, NJ: Paulist Press, 2014).

¹⁹ John Paul II, *Familiaris consortio* (November 22, 1981), n. 84.

²⁰ Albert Mitterer, *Dogma und Biologie der heiligen Familie. Nach dem Weltbild des hl. Thomas von Aquin und dem der Gegenwart* (Vienna, Austria: Herder, 1952).

²¹ See Paul Haffner, *The Mystery of Mary* (Herefordshire, UK: Gracewing, 2004), 157–158.

²² Jones, "Magisterial Teaching on Vital Conflicts," 104.

²³ *Ibid.*, 103; see also 96.

²⁴ See DH 3336–3338 and 3358.

²⁵ Pius XII, Address to the Association of Large Families (November 26, 1951), *AAS* 43 (1951): 855–860.

²⁶ *Ibid.*, 859.

²⁷ DH 3258.