

Therapeutic Access to the Embryo

Can Therapeutic IVF Be Justified?

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Abstract. Genomic interventions ex utero and in utero are already a reality in medicine. It is plausible to believe that this reality will lead to therapies at the preimplantation level, especially where such interventions are the only safe and effective way to truly prevent human suffering and disease in offspring. The plausibility of this type of genomic therapy is of particular interest for prospective parents who are Roman Catholic, since in vitro fertilization provides the only means by which an offspring's genome may be accessed prior to implantation. The goal of this essay is to provide a review of two traditional methodologies in Roman Catholic moral thought and the potential moral quandary they present Roman Catholic parents: adherence to moral teaching prohibiting IVF or relief of gene-based disease in their child. After finding little resolution of this quandary through these two methodologies, the essay proposes as an alternative a third approach that leans heavily on John Henry Cardinal Newman's understanding of doctrinal development. *National Catholic Bioethics Quarterly* 11.4 (Winter 2011): 735–756.

In 2008, Ruth Lathi and her colleagues published a paper in *Fertility and Sterility* noting the potential benefits of preimplantation genetic diagnosis (PGD) for the early detection of chromosomal abnormalities in which aneuploidy (an abnormal number of chromosomes) was a likely factor contributing to miscarriage following infertility

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treatment.¹ Given that PGD was first introduced to test embryos for genetic disease before implantation, it is a logical next step to suggest that if the technology were available to correct the aneuploidy at the embryonic level, screening and disposal of embryos would no longer be necessary.² This alone would be a great good achieved.

PGD currently requires the use of some reproductive technology to provide access to the embryo prior to implantation, regardless of the parent's fertility. This holds true whether the aneuploidy can be corrected or not. Because IVF provides the means to access the offspring's genome prior to implantation, any potential therapeutic intervention on the human embryo's genome before implantation creates a necessary link between IVF and the therapeutic intervention. For the purposes of this essay, I will term this composite act "preimplantation therapeutic IVF."

Circumstances may arise in which a therapeutic intervention may be the only safe and effective treatment modality that can truly *prevent* human suffering and disease in a couple's offspring—especially when the couple are known carriers of gene-based disease.³ In such situations, prospective parents who are Roman Catholic will be troubled in conscience because adherence to the prohibition on IVF in Roman Catholic moral teaching frustrates their desire for relief of gene-based suffering and disease in their children.

I am wondering whether this contradiction needs to exist. It is important to note that this frustration would arise in parents who are fertile and could conceive through sexual intercourse but wish to use preimplantation therapeutic IVF to prevent passing a known and preventable gene-based disease to their offspring.

The goal of this essay is to examine the moral quandary faced by prospective parents who are Roman Catholic in light of two traditional methodologies. The essay begins with a discussion of the Roman Catholic moral prohibition on IVF and the teaching on the inseparability of the unitive and procreative dimensions of the sexual act. In light of this inseparability, Roman Catholic moral teaching would not seem to allow for preimplantation therapeutic IVF.

Nonetheless, the essay first explores the therapeutic exception to contraception found in *Humanae vitae* as a possible analogy for excepting preimplantation gene-based therapies. The moral teaching of *Humanae vitae* uses the principle of double effect to maintain the moral permissibility of therapeutic means that may have an unintended contraceptive effect. Such means are deemed licit despite their contraceptive effect—even where that effect may be foreseen—provided the contraceptive

¹ Ruth Lathi, Lynn M. Westphal, and Amin A. Milki, "Aneuploidy in the Miscarriages of Infertile Women and the Potential Benefit of Preimplantation Genetic Diagnosis," *Fertility and Sterility* 89.2 (February 2008): 353–357.

² Lathi et al. note the benefit of extended panels for PGD in conjunction with treatment for infertility, given the magnified loss due to the "emotional investment and time spent in treatment, as well as the delay in subsequent treatment attempts" (253). Recognizing that numerous studies have shown that most first-trimester miscarriages are caused by "numeric chromosomal abnormalities," some with relative frequency of specific aneuploidies, the authors also show the benefit of expanded PGD panels to detect different aneuploidies prior to implantation.

³ Ibid.

effect is not directly intended. Use of the analogy to justify preimplantation therapeutic IVF breaks down, however, because the creation of an embryo in vitro occurs before therapeutic benefit of the intervention can be realized, not simultaneously.

The essay next examines the possibility of re-describing the *telos* of the act of IVF in the context of a preimplantation therapeutic genomic intervention—moving from a focus on infertility to the relief of human suffering and disease. However, re-describing the *telos* is problematic in light of the means–end debate in the Catholic moral tradition; that is, traditional Roman Catholic teaching considers IVF intrinsically evil even though it is necessary for the good of a therapeutic intervention. Hence, despite the good achieved by use of the therapeutic intervention (the end), the use of IVF (the means) to achieve that end remains morally illicit. As a result, re-describing the *telos* is problematic in traditional Roman Catholic moral teaching, and the therapeutic intervention is rendered illicit insofar as it *requires* the use of IVF.

In light of the apparent difficulties these two proposals face, the stage is thus set to explore an alternative possibility: specifically, the possibility of doctrinal development in the Roman Catholic moral teaching on IVF when IVF is performed in this preimplantation, gene-based therapeutic context. The final section of this essay offers a proposal for further theological considerations for such an approach. To narrow the review to a plausible Roman Catholic theological context, the use of IVF is considered constrained, for the purposes of the essay, to mutually consenting, married, heterosexual couples.

Traditional Teaching concerning IVF

The teaching of the Roman Catholic tradition with regard to IVF draws on the work of Pope Pius XII, who first addressed the morality of artificial insemination in 1949. In his address to the Fourth International Convention of Catholic Physicians, he states, “Artificial insemination outside of marriage is to be condemned purely and simply as immoral.” Addressing the more difficult question of artificial insemination in the context of marriage, he asserts a more qualified position: (a) the fact that a child results from the process does not render the process itself moral; (b) the desire to have children does not render the act licit; therefore, (c) the specific process of artificial insemination itself must be “entirely rejected.”⁴ Pius XII does note, however, that “certain artificial means designed only to facilitate the natural act or to enable that act, performed in a normal manner, to attain its end” are not necessarily proscribed.⁵

This teaching was reaffirmed in March 1987 in *Donum vitae*.⁶ In general, the Congregation for the Doctrine of the Faith (CDF) sought to address questions

⁴Pius XII, “Address to the Fourth International Convention of Catholic Physicians” (September 1949), in *Readings in Moral Theology No. 8: Dialogue about Catholic Sexual Teaching*, ed. Charles E. Curran and Richard A. McCormick (New York: Paulist Press, 1993): 224.

⁵Ibid. See also Pius XII, Address to the Italian Association of Catholic Midwives (October 29, 1951), *AAS* 43 (1951): 849–851; Pius XII, Address to Participants in the Second World Congress on Fertility and Sterility (May 19, 1956), *AAS* 48 (1956): 470–474; and John Mahoney, “Human Fertility Control,” in *Readings in Moral Theology No. 8*, 253.

⁶Congregation for the Doctrine of the Faith, *Donum vitae* (February 22, 1987).

concerning human generation in light of technological advancements that aid infertility. The response of the CDF to the issue of homologous IVF follows two lines of reasoning. The first concerns the inseparability of the unitive and procreative dimensions of the sexual act. The second concerns the dignity of the child, a dignity that must never be subservient to technical procedures. This essay focuses on the former.

Donum vitae begins the moral analysis by reaffirming the Church's teaching on the inseparability of the procreative and unitive meanings of the marital act found in Pope Paul VI's encyclical *Humanae vitae*:

The Church's teaching on marriage and human procreation affirms the "inseparable connection, willed by God and unable to be broken by man on his own initiative, between the two meanings of the conjugal act: the unitive meaning and the procreative meaning. Indeed, by its intimate structure, the conjugal act, while most closely uniting husband and wife, [makes them capable of] the generation of new lives, according to laws inscribed in the very being of man and of woman."⁷

The CDF argues that this same doctrine concerning the link between the unitive and procreative has implications for the moral analysis of IVF. Here *Donum vitae* notes that IVF, in seeking procreation outside the context of the conjugal act, violates the inseparability of the two ends of the marital act. More simply stated, IVF separates the goods and the meanings of the marital act. From the moral point of view, then, IVF, in separating the unitive act from the generation of children, deprives procreation of its proper perfection as the fruit of the conjugal act (II.B.4b).

The document grounds the moral value of this inseparability in the "unity of the human being"—body and spirit. This unity is evident in the conjugal act in which the couple express their "self-gift" while at the same time expressing "openness to the gift of life" (II.B.4b). Hence, the teaching draws the conclusion that the act is inseparably corporal and spiritual. The potential procreative origin of the human person must therefore follow from an act that is linked to both the biological and the spiritual in the context of marriage. As such, a technical process that places fertilization outside the context of the bodies deprives the act of its inherent meaning and value as "expressed in the language of the body and in the union of the human persons" (II.B.4b).

The argument put forth in *Donum vitae* finds IVF—in which fertilization takes place in a Petri dish, outside the context of the human conjugal act—a method of procreation that fails to respect the intimate link between the "meanings of the conjugal act and respect for the unity of the human beings" (II.B.4c). Such a method of procreation fails to acknowledge the profound bodily and spiritual nature of the conjugal act by deliberately removing the human unitive dimension. IVF "dissociates from the conjugal act the actions which are directed to human fertilization," thus rendering the act illicit in that it stands in direct "opposition to the dignity of procreation and of the conjugal union" (II.B.5). In short, the document states that directly intending to separate the unitive and procreative dimensions of the conjugal act is inherently wrong. Since IVF necessarily separates the unitive from the procreative in an attempt to achieve fertilization, it follows that IVF, to produce human life, *in*

⁷Ibid., II.B.4a, quoting Paul VI, *Humanae vitae* (July 25, 1968), n. 12.

the circumstances of infertility, is morally wrong.⁸ As such, IVF is not justifiable for any *extraneous* circumstance or intention.

The Vatican II document *Gaudium et spes* further highlights the principle of inseparability in affirming the Roman Catholic moral teaching that although “marriage and conjugal love are by their nature ordained toward the begetting and educating of children,” marriage “is not . . . solely for procreation,” and must embody “the mutual love of the spouses.”⁹ Stating more explicitly how the Roman Catholic prohibition of IVF preserves the unitive and procreative meanings of the marital act, *Gaudium et spes* notes that

When there is question of harmonizing conjugal love with the responsible transmission of life, the moral aspect of any procedure does not depend solely on sincere intentions or on an evaluation of motives. It must be determined by objective standards. These, based on the nature of the human person and his acts, preserve the full sense of mutual self-giving and human procreation in the context of true love.¹⁰

Hence, the Roman Catholic moral tradition affirms the morality of sexual acts to the extent that they maintain the integrity of the unitive and procreative

⁸ Monsignor Elio Sgreccia argues a similar point, noting that the technical process of IVF deprives procreation of the personal communion that can be expressed only through the bodies of the married couple. Technical intervention in this process to achieve fertilization “means that the conjugal act is degraded to the typology of technical acts” and represents “the intrinsic reduction which is characteristic of technology.” Sgreccia, “Moral Theology and Artificial Procreation in Light of *Donum Vitae*,” in *Gift of Life: Catholic Scholars Respond to the Vatican Instruction*, ed. Edmund D. Pellegrino, John Collins Harvey, and John P. Langan (Washington, DC: Georgetown University Press, 1990), 132. John Haas argues toward similar ends, but grounds his argument in the totality of the marital act—its physical, emotional, and spiritual dimension—and the necessary presence of all dimensions in the human expression of the act. He argues that the expression of the act itself must ultimately point to the dignity of the persons engaged in the act: the profound humanness of the act necessitates the presence of coexisting dimensions. Any conception, therefore, that takes place outside the physical, emotional, and spiritual expression of the husband and wife diminishes the act—the act is deprived of its human perfection. Haas argues that such an act, deprived of its human perfection, “is less than fully human and therefore beneath the dignity of a fully human act.” Haas, “The Natural and the Human in Procreation,” in *Gift of Life*, 112. Bruno Schüller takes a slightly different approach, as he is concerned with the structure of the arguments as presented in the document as well as the conclusions drawn from certain premises. He asks the central question: “So what is exactly the reason for the inseparable meanings of the conjugal act?” He is concerned with the question because the structure of the response to the “problem of homologous IVF” found in *Donum vitae* seems to be, as he argues, simply paragraph after paragraph reasserting the same claim without justifying the assertion. He is willing to accept that the answer can be found in the origin and dignity of the human person, but challenges that if this is the case, “Is there no other act of giving beyond the conjugal act” which qualifies as an expression of self-gift? Bruno Schüller, “Paraenesis and Moral Argument in *Donum Vitae*,” in *Gift of Life*, 87–88.

⁹ Vatican Council II, *Gaudium et spes* (December 7, 1965), n. 50.

¹⁰ *Ibid.*, n. 51.

meanings of the marital act.¹¹ Pope John Paul II's apostolic exhortation *Familiaris consortio* makes this point explicitly: "When couples . . . separate these two meanings that God the Creator has inscribed in the being of man and woman and in the dynamism of their sexual communion, they act as 'arbiters' of the divine plan and they 'manipulate' and degrade human sexuality—and with it themselves and their married partner—by altering its values of 'total' self-giving."¹²

In light of this norm, then, the Roman Catholic prohibition of IVF is consistent with its traditional moral teaching on the inseparability of the unitive and procreative meanings of the marital act;¹³ that is, IVF is a technological intervention into the unitive dimension of the marital act. IVF necessarily moves conception from the purview of the married partners into a laboratory. In this way, conception is deprived of the essential "total self-giving" of the partners as manifest through the act of sexual intercourse.¹⁴ In this lies the problem for a preimplantation therapeutic genomic intervention, more specifically preimplantation therapeutic IVF; that is, a preimplantation therapeutic genomic intervention necessarily separates the unitive dimension from the procreative in order to access the embryo prior to implantation. Such preimplantation interventions are therefore de facto illicit in traditional Roman Catholic moral teaching.

The opening section of this essay alludes to the troubled conscience of prospective Roman Catholic parents concerning the prohibition of IVF in Roman Catholic moral teaching, which may contravene their desire for relief of gene-based suffer-

¹¹ Pope John Paul II attempts to bring distinctive elements to the Catholic discussion of sexuality, marriage, and parenthood, but essentially reaffirms the conclusions of his predecessors regarding individual sexual acts. See his catecheses of 1979–1984 in *Man and Woman He Created Them: A Theology of the Body* (Boston: Daughters of St. Paul, 2006). See also Richard Grecco, "Recent Ecclesiastical Teaching," in *Readings in Moral Theology No. 10: John Paul II and Moral Theology*, ed. Charles E. Curran and Richard A. McCormick (New York: Paulist Press, 1998), 146; and in the same volume, Ronald Modras, "Pope John Paul II's Theology of the Body," 149–156, and Richard M. Hogan and John M. LeVoi, "The Family and Sexuality," 157–183.

¹² John Paul II, *Familiaris consortio* (November 22, 1981), n. 32.

¹³ This position is affirmed in canon law; see Ladislav Orsy, *Marriage in Canon Law: Text and Comments, Reflections and Questions* (Wilmington, DE: Michael Glazier, 1986); Peter Huizing, "Canonical Implications of the Conception of Marriage in the Conciliar Constitution *Gaudium et Spes*," in *Commitment to Partnership: Explorations of the Theology of Marriage*, ed. William P. Roberts (New York: Paulist Press, 1987), 102–136; Bernard Cooke, "Indissolubility: Guiding Ideal or Existential Reality?" in *Commitment to Partnership*, 64–75; Theodore Mackin, "How to Understand the Sacrament of Marriage," in *Commitment to Partnership*, 34–60; and Ladislav Orsy, "Faith, Sacrament, Contract and Christian Marriage: Disputed Questions," *Theological Studies* 43.2 (September 1982): 379–398.

¹⁴ CDF, *Donum vitae*, II.B.4c and 5. See also William E. May, "Begotten, Not Made," in *Perspectives in Bioethics*, ed. Ronald D. Lawler and William E. May (Cromwell, CN: Pope John Paul II Bioethics Center, 1983), 54; and Haas, "The Natural and the Human," 111. Contrast this view with Thomas A. Shannon and Lisa Sowle Cahill, *Religion and Artificial Reproduction: An Inquiry into the Vatican "Instruction on Respect for Human Life in Its Origin and on the Dignity of Human Reproduction"* (New York: Crossroad, 1988), 138.

ing and disease in their child—an intervention that requires the use of IVF to gain access to the embryo prior to implantation. Yet traditional Roman Catholic teaching considers IVF illicit by virtue of the fact that it separates the unitive and procreative ends of the sexual act *in the circumstances of infertility*. In light of this conclusion, this essay turns to two methods by which Roman Catholic teaching might consider preimplantation therapeutic IVF. The first of these methods will focus on *Humanae vitae* and its relevance for an analogy that might create a provision for the use of such an intervention despite the prohibition of IVF.

A Possible Therapeutic Exception

The principle of double effect (PDE) is used in the Roman Catholic moral tradition to resolve dilemmas concerning human acts that bring about two effects: one good and permissible and the other evil and prohibited.¹⁵ The PDE turns upon the distinction between intended and merely foreseen effects. Proper application of the PDE uses this distinction (i.e., between intended and foreseen effects) to render permissible those acts for which an evil effect is foreseen but not intended.¹⁶ Use of this principle allows the Roman Catholic moral tradition to permit acts that would otherwise be impermissible if the foreseen evil effect of the human act were directly intended.¹⁷

Humanae vitae makes use of the PDE to address the moral ambiguity concerning human acts that have both a contraceptive and therapeutic effect. Use of the principle allows the Roman Catholic tradition to consider licit therapeutic actions

¹⁵ Joseph T. Mangan, “An Historical Analysis of the Principle of Double Effect,” *Theological Studies* 10 (1949): 41–61; Thomas A. Cavanaugh, “Aquinas’s Account of Double Effect,” *Thomist* 61.1 (1997): 107–121; Lucius I. Ugorji, *The Principle of Double Effect: A Critical Appraisal of Its Traditional Understanding and Its Modern Reinterpretation* (Frankfurt: Peter Lang, 1993); J. Keenan, “The Function of the Principle of Double Effect,” *Theological Studies* 54 (1993): 294–315; Peter Knauer, “The Hermeneutic Function of the Principle of Double Effect,” in *Readings in Moral Theology No. 1: Moral Norms and Catholic Tradition*, ed. Charles E. Curran and Richard A. McCormick (New York: Paulist Press, 1979), 1–39.

¹⁶ This distinction is not without controversy. For those who argue in favor of the distinction, see Thomas J. Bole, “The Theoretical Tenability of the Doctrine of Double Effect,” *Journal of Medicine and Philosophy* 16.5 (October 1991): 467–473. For those who argue against the distinction in terms of its problematic conclusions, see Alastair Norcross, “Intending and Foreseeing Death: Potholes on the Road to Hell,” *Southwest Philosophy Review* 15.1 (January 1999): 115–123.

¹⁷ Joseph Boyle, “Who Is Entitled to Double Effect?” *Journal of Medicine and Philosophy* 16.5 (October 1991): 475–494, where he states succinctly that “according to the PDE . . . it is sometimes permissible to bring about as a side effect of one’s intentional action what it would be wrong to bring about intentionally.” James Keenan views the PDE differently insofar as it does not function as a principle that justifies certain human acts or a principle that grants exceptions to moral norms; rather, the principle “has a heuristic and confirming function” which serves to confirm a case’s congruency with paradigm cases in the Roman Catholic moral tradition. See Keenan, “The Function of the Principle of Double Effect,” *Theological Studies* 54.2 (June 1993): 294–315.

that would not be permissible if their contraceptive effect were directly intended. Pius XII recognized the legitimate use of the principle in his 1953 addresses to urologists and hematologists, appealing to the PDE to render morally permissible those therapeutic acts that are necessary to cure disease but may have, as an unintended but foreseen side effect, a contraceptive effect.¹⁸ *Humanae vitae* refers to the PDE as the principle that renders licit therapeutic means that indirectly act as an impediment to procreation.¹⁹ Further analysis of the “therapeutic exception” found in *Humanae vitae*—especially its justification through use of the PDE—is necessary to determine its relevance as an analogy for preimplantation therapeutic IVF.²⁰

A contraceptive act is defined in *Humanae vitae* as “any action which either before, at the moment of, or after sexual intercourse, is specifically intended to prevent procreation—whether as an end or as a means.”²¹ A contraceptive act is in direct contradiction to the moral norm that requires the unitive and procreative dimensions to be present in each and every act.²² As such, the Roman Catholic moral tradition finds intended contraception “fundamentally contrary to married love and the dignity of the human person, and . . . , therefore, morally impermissible without exception.”²³

¹⁸In his address to the Twenty-sixth Congress of Urology (October 8, 1953), Pius XII highlights the three conditions necessary for morally permissible surgical operations that entail “anatomical or functional mutilation.” Although the general framework parallels the PDE, reference is made to use of the principle of totality and integrity to justify the operations. The English text can be found in Odile M. Liebard, ed., *Official Catholic Teachings*, vol. 4, *Love and Sexuality* (Wilmington, NC: McGrath, 1978), 129–133. In his address to the Seventh International Hematological Congress in Rome (September 12, 1958), Pius XII explicitly refers to the PDE to address the question of whether it is permissible to “impede ovulation by pills used to remedy undue reaction of the uterus and the organism.” He argues that use of the pills can be permitted “if a woman takes such medicine, not to prevent conception, but only on the advice of a doctor as a necessary remedy because of the condition of the uterus or the organism.” English text in Liebard, *Love and Sexuality*, 234–243.

¹⁹Paul VI, *Humanae vitae*, n. 15.

²⁰It is generally accepted that there are four conditions that govern legitimate use of the PDE. Although variation exists concerning the precise content of these four conditions, Mangan constructs the modern formulation of the principle. He states that “A person may licitly perform an action that he foresees will produce a good and a bad effect provided that four conditions are verified at one and the same time: (1) that the action in itself, from its very object, be good or at least indifferent; (2) that the good effect and not the evil effect be intended; (3) that the good effect be not produced by means of the evil effect; (4) that there be proportionately grave reason for permitting the evil effect.” Mangan, “Historical Analysis,” 43.

²¹Paul VI, *Humanae vitae*, n. 14. See also John XXIII, *Mater et magistra* (May 15, 1961), *AAS* 53 (1961), 447; Pius XII, Address to Midwives (October 29, 1951), *AAS* 43 (1951), 843; Pius XII, Address to the Society of Hematology (September 12, 1958), *AAS* 50 (1958), 734–735; and Pius XI, *Casti connubii* (December 31, 1930), *AAS* 22 (1930), 559–561.

²²Cahill notes the relationship between the teaching on the inseparable meanings of the conjugal act and the Tradition’s ban on artificial contraception. See “Catholic Sexual Ethics and the Dignity of the Person: A Double Message,” *Theological Studies* 50 (1989): 120–127. For Roman Catholic Church documents that attest to this position, see *Humanae vitae*, n. 14; *Catechism of the Catholic Church*, n. 2370; and *Veritatis splendor*, nn. 79–82.

²³*New Catholic Encyclopedia*, 2nd ed., 2003, s.v. “Anovulants.”

While affirming the moral norm prohibiting contraception, *Humanae vitae* does recognize that some contraceptive means may have a therapeutic effect in the treatment of certain medical conditions (e.g., dysmenorrhea, chronic anovulatory disorders, dysfunctional uterine bleeding, and endometriosis).²⁴ This seems to be the intended meaning of the licitness of therapeutic interventions using certain devices—the “therapeutic exception”: “The Church does not at all consider illicit the use of those therapeutic means truly necessary to cure diseases of the organism, even if an impediment to procreation, which may be foreseen, should result therefrom, provided such impediment is not, for whatever motive, directly willed.”²⁵ *Humanae vitae* thus recognizes that where contraceptive devices or medication have, and are intended to have, a therapeutic effect, their use may be morally permissible. Such treatments are permissible despite foreseen interference in fertility, so long as the contraceptive effect is not directly intended and, of course, the device or medication itself is at least morally neutral in its object.²⁶ The teaching of the Roman Catholic moral tradition on the distinction between direct contraception and therapeutic acts with foreseen but unintended contraceptive effects rests, in part, on the intention of the moral agent. This moral judgment of the act makes use of the PDE to render the act licit. Is the “therapeutic exception” argument as understood within the context of *Humanae vitae* a relevant analogy for preimplantation therapeutic IVF?

Condition 1: The Action Must Be Good or Indifferent

The first condition of the PDE requires that the action in and of itself, from its very object, be morally good or neutral.²⁷ This good is essential to the act; it is primarily and necessarily that to which the action tends by virtue of its very nature.²⁸ *Humanae vitae* n. 15 cites the first condition of the PDE by articulating the moral object of the act as medical therapy. This accounts for the therapeutic end or very nature of the act in this specific context. Paul VI notes that although the medical therapy foreseeably and indirectly acts as an impediment to procreation, it still may be licit “provided such an impediment is not for whatever motive *directly* willed” (emphasis added).

Applying this understanding of the first condition of the PDE to preimplantation therapeutic IVF requires a clear determination of the moral object. Here the moral object is defined as the therapeutic act that serves to intervene in the genome of the

²⁴ Robert Burkow, ed., *The Merck Manual*, 16th ed. (Rahway, NJ: Merck, 1992), 1792, 1801–1805, 1808, 1810–1811.

²⁵ Paul VI, *Humanae vitae*, n. 15.

²⁶ Bernard Häring, “The Inseparability of the Unitive-Procreative Functions of the Marital Act,” in *Contraception: Authority and Dissent*, ed. Charles Curran (New York: Herder, 1969), 176–185; Patrick J. Coffey, “*Humanae Vitae* and Licit Contraception?” *Philosophy and Theology* 3 (Winter 1988): 172–182; John M. Haas, “Chemical, Barrier, and Surgical Contraception and Catholic Health Care Services,” in *Catholic Health Care Ethics*, ed. Peter J. Cataldo and Albert S. Moraczewski (Braintree, MA: National Catholic Bioethics Center, 2001), 8/1–8/15.

²⁷ Mangan, “Historical Analysis,” 59.

²⁸ *Catechism of the Catholic Church*, n. 1751.

fetus to correct anomalies. Correction of genetic anomalies is therefore the good sought by preimplantation therapeutic IVF and is the end to which the action is directed.

Given this description of the moral object, the PDE further requires that the good end is in fact the end directly sought by the agent. In other words, although preimplantation therapeutic IVF has two effects—(a) it makes possible the correction of deleterious genetic anomalies before implantation, and (b) it separates the unitive end from the procreative act—the second criteria of the PDE requires that a, the good effect, be intended, while b, the evil effect, be merely a foreseen but unintended effect.²⁹ This leads to the second condition.

Condition 2. The Evil Effect Is Not Intended

The second condition of the PDE requires that the good effect and not the evil effect—despite whether it is foreseeable—be intended by the moral agent.³⁰ Here the PDE makes use of the morally relevant distinction between bringing about a bad effect and merely foreseeing that one's action will unavoidably bring about a bad effect.³¹ *Humanae vitae* makes use of the second condition of the PDE by articulating the morally relevant distinction between a foreseen contraceptive effect and one that is directly willed; namely, when necessary for reasons of health, persons may impede procreation for a directly willed therapeutic effect.³²

Applying this understanding of the second condition of the PDE in the context of *Humanae vitae* to preimplantation therapeutic IVF requires a clear determination of the intention of the moral agent. Here the intention of the moral agent is to seek therapeutic benefit for the fetus suffering from a genetic anomaly—analogueous to the therapeutic benefit intended in the use of medicine that may unavoidably prevent conception.³³ Thus the intention, defined from the perspective of the acting subject,

²⁹ Christopher Kaczor, "Double-Effect Reasoning from Jean Pierre Gury to Peter Knauer," *Theological Studies* 59 (1998): 297–316.

³⁰ Albert Di Ianni, "The Direct/Indirect Distinction in Morals," in *Readings in Moral Theology No. 1*, 215–243; and Christopher Kaczor, "Double-Effect Reasoning," 297–316.

³¹ Bruno Schüller, "Direct Killing/Indirect Killing," in *Proportionalism: For and Against*, ed. Christopher Kaczor (Milwaukee, WI: Marquette University Press, 2000), 148–165.

³² Paul VI, *Humanae vitae*, n. 15, which cites (in footnote 19) Pius XII's Address to the Seventh Congress of the International Society of Hematology (September 12, 1958), *AAS* 50 (1958): 734–735 (English text in Liebard, *Love and Sexuality*, 234–243). See also Janet E. Smith, *Humanae Vitae: A Generation Later* (Washington, DC: The Catholic University of America Press, 1991), 68–97. It is important to note that in the 1958 papal address Pius XII makes use of both the principle of totality and the principle of double effect to justify actions that would result in an impediment to procreation. Although a discussion of the principle of totality is outside the scope of this article, the 1958 address discusses the permissibility of impediments to procreation in terms of what is *not* allowed by the principle of totality. See Pius XII, Address to the Congress of the Italian Association of Urology (October 8, 1953), *AAS* 45 (1953): 674–675 (English text in Liebard, *Love and Sexuality*, 129–133), also cited in footnote 19 of *Humanae vitae*, for an expanded discussion of how an appeal to the principle of totality cannot be made when the medical therapy in question does not directly address a pathology that would be aggravated by pregnancy.

³³ Paul VI, *Humanae vitae*, n. 15; Pius XII, Address to the Italian Association of Urology.

is determined in part by the end sought, namely, the therapeutic benefit. The morally determinative criteria then becomes to what extent the person intending the therapeutic benefit of preimplantation therapeutic IVF does so without at the same time willing the evil effect: separation of the unitive end from the procreative act. In other words, where one intentionally seeks preimplantation therapeutic IVF for its ability to cure genetic anomalies in the fetus prior to implantation, and the separation of the unitive end from the procreative act of IVF is merely an unavoidable consequence of achieving some other good, the good effect is said to be intended. However, to further clarify the intentionality of the moral agent seeking the therapeutic benefit of preimplantation therapeutic IVF, the third condition of the PDE must be satisfied.

Condition 3. The Means to the End

The third condition of the PDE requires that the good effect not be produced by means of the evil effect.³⁴ In other words, in further qualifying the intention of the moral agent, the third condition of the PDE maintains that the good effect must not have the bad effect as its cause.³⁵ *Humanae vitae* n. 15 makes use of this condition of the PDE in the brief phrase “should result therefrom.” Here Paul VI notes that the evil effect (contraception) must result from the morally good act of medical therapy. Without this condition, it would be possible to obtain the good effect (medical therapy) by immoral means (contraception).

Applying this understanding of the third condition to preimplantation therapeutic IVF requires a clear determination of the causal relationship between the good and the evil effects. In this way, the third condition of the PDE serves to ensure that the therapeutic effect of preimplantation therapeutic IVF is not the result of the separation of the unitive end from the procreative act.³⁶ To preserve the relevance of the analogy to *Humanae vitae* n. 15, separation of the unitive end from the procreative act “should result” from the therapeutic effect of preimplantation therapeutic IVF.³⁷ This statement reveals the breakdown in the analogy to n. 15: separation of the unitive end from the procreative end precedes the therapeutic effect of preimplantation therapeutic IVF.

In fact, the breakdown occurs both in causality and in chronology:³⁸ because procreation via IVF is the necessary means for access to the embryo prior to implantation, and IVF necessarily separates the unitive end from the procreative, the good effect of the therapeutic act of preimplantation therapeutic IVF is realized if and only if the evil effect precedes and causes the good effect. This violates condi-

³⁴ Mangan, “Historical Analysis,” 60.

³⁵ Kaczor, “Double-Effect Reasoning,” 302; Benedict M. Ashley and Kevin D. O’Rourke, *Health Care Ethics: A Theological Analysis*, 4th ed. (Washington, DC: Georgetown University Press, 1997), 192; Joseph M. Boyle, “Toward Understanding the Principle of Double Effect,” *Ethics* 90.4 (July 1980): 530; Thomas Cavanaugh, “The Intended/Foreseen Distinction’s Ethical Relevance,” *Philosophical Papers* 25.3 (November 1996): 179–188.

³⁶ Kaczor, “Double-Effect Reasoning,” 302.

³⁷ By using the phrase “should result therefrom” in *Humanae vitae*, n. 15, Paul VI notes the specific reference to the causality of effects in the PDE.

³⁸ Kaczor, “Double-Effect Reasoning,” 302.

tion 3 of the PDE insofar as the evil effect both precedes and causes the good effect. Therefore, regardless of one's formulation of the third condition of the PDE—as a matter of causality or chronology—the criterion is violated.³⁹ Where condition 3 of the PDE is violated, there is no need to proceed to condition 4 of the PDE to seek moral justification for preimplantation therapeutic IVF.

This confirms what was merely alluded to in the introduction to this section: it is impermissible to use the therapeutic exception of *Humanae vitae* n. 15 as an analogy to justify the therapeutic good resulting from preimplantation therapeutic IVF. The essay now turns to the possibility of re-describing the *telos* of the act of IVF in the context of preimplantation therapeutic IVF.

Therapeutic *Telos* and the Means–End Dictum

A teleological approach to the morality of human action is characterized by a concern for the intended goal of the agent as it relates to the preservation or maximization of nonmoral goods or values in coming to a decision about the rightness or wrongness of an act.⁴⁰ In other words, human action is understood as a personal act that is related to the intention and circumstances in which the act is performed.⁴¹ By way of contrast, teleological ethics is not to be confused with utilitarianism or a simple consequentialist theory. Teleology is not simply a matter of looking to results of actions and only then determining an act's moral character.⁴² A teleological analysis may find an act immoral even when the consequences are what was legitimately desired. Furthermore, an act may be morally permissible even when the consequences are far from what was intended.⁴³ The consequences alone do not determine whether or not an act is morally appropriate. In a teleological framework, the moral quality of an act is contingent on fulfillment of its proper *telos*.⁴⁴

A teleological evaluation of IVF, then, turns on IVF understood as a personal act pursued to remedy infertility. A remedy for infertility is therefore the goal, or *telos*,

³⁹ See, for example, John Finnis, Germain Grisez, and Joseph Boyle, "'Direct' and 'Indirect': A Reply to Critics of Our Action Theory," *Thomist* 65 (2001): 1–44, where the psychological distinction between direct and indirect applies more readily to condition 1 of the PDE, perhaps bringing into question the need for condition 3. See also Donald B. Marquis, "Four Versions of Double Effect," *Journal of Medicine and Philosophy* 16.5 (October 1991): 515–544.

⁴⁰ Schüller, *Direct Killing/Indirect Killing*, 155–163.

⁴¹ Louis Janssens, "Ontic Evil and Moral Evil," *Louvain Studies* 4.1 (Spring 1972): 115–156.

⁴² Those who espouse this characterization of teleological ethics include Ronald D. Lawler, "Critical Reflections on Current Bioethical Thinking," in *Perspectives in Bioethics*, 21; and Paul Quay, "The Unity and Structure of the Human Act," *Listening* 18 (1983): 245–259.

⁴³ Janssens, "Ontic Evil and Moral Evil," 122–133.

⁴⁴ Richard A. McCormick, "Proportionalism: Clarification through Dialogue," in *Readings in Moral Theology No. 11: The Historical Development of Fundamental Moral Theology in the United States*, ed. Charles E. Curran and Richard A. McCormick (New York: Paulist Press, 1999): 181–199.

pursued. Although a moral analysis of IVF—in this teleological framework—centers on whether remedying infertility is a sufficient or proper reason for separating the unitive dimension from the procreative, the magisterium understands that to separate the unitive end from the procreative deprives the marital act of its fullness.⁴⁵ In this specific context then (i.e., the use of IVF to remedy infertility), IVF differs greatly from procreation by marital intercourse. Thus, traditional Roman Catholic moral teaching does not consider IVF a legitimate means of remedying infertility, because of its inherent separation of the unitive and procreative dimensions of the sexual act.⁴⁶

The analysis in this section concentrates on this specific point: if there are times when a person cannot avoid causing evil in the pursuit of good, and if such instances may in certain situations be seen as ethically legitimate, then could IVF be viewed as ethically legitimate when it is used to bring about a potential therapeutic intervention on the human embryo's genome before implantation? This hypothesis rests on the understanding that re-describing the *telos* of IVF as relief of human suffering and disease—rather than, according to its traditional *telos*, as a therapy for infertility—is significant in the moral evaluation of the act. To determine whether a re-description of the *telos* is morally determinative, the re-description must be evaluated within context of the means–end dictum found in Catholic moral theology.

The means–end dictum in Catholic moral teaching further qualifies the intention of the moral agent. Josef Fuchs summarizes the traditional understanding of the means–end dictum, noting that “in cases in which, during the course of the action, the bad effect preceded the good, temporally or physically, opinion was always inclined toward prohibition, on the grounds that otherwise the good effect would be achieved *through* the realization of the bad effect (as means).”⁴⁷ In other words, where the good effect is produced by means of the evil effect, the good is derived from willing evil.⁴⁸ The moral evaluation of the act as a whole was traditionally characterized by the causal relationship between the good and bad effect⁴⁹—that is, a bad means must never be used to achieve a good end; rather, the good effect must derive from good or morally indifferent means.⁵⁰

⁴⁵ John Paul II, *Reflections on Humanae vitae: Conjugal Morality and Spirituality* (Boston: Daughters of St. Paul, 1984).

⁴⁶ CDF, *Donum vitae*, II.B.4b.

⁴⁷ Josef Fuchs, “The Absoluteness of Moral Terms,” *Gregorianum* 52 (1971): 415–457, reprinted in Christopher Kaczor, ed., *Proportionalism: For and Against* (Milwaukee, WI: Marquette University Press, 2000), 86.

⁴⁸ Mangan, “Historical Analysis,” 60.

⁴⁹ Fuchs, “Absoluteness of Moral Terms,” 86.

⁵⁰ See Bruno Schüller, “The Double Effect in Catholic Thought: A Reevaluation,” in *Doing Evil to Achieve Good: Moral Choices in Conflict Situations*, ed. Richard A. McCormick and Paul Ramsey (Chicago, IL: Loyola University Press, 1978): 165–192; McCormick, “Commentary on the Commentaries,” in *Doing Evil to Achieve Good*, 258–262; Timothy E. O’Connell, *Principles for a Catholic Morality* (New York: Seabury, 1978); Philip S. Keane, *Sexual Morality: A Catholic Perspective* (New York: Paulist Press, 1977); and Norbert J. Ragali, “Evil and Models of Christian Ethics,” *Horizons* 8.1 (Spring 1981): 7–22.

Returning to the primary focus of this section, the question remains as to whether IVF (the means) can be used legitimately for a therapeutic goal of alleviating human suffering and disease (the end). For an affirmative answer, the means–end distinction requires the moral analysis to find IVF legitimate if and only if its use serves to alleviate human suffering and disease through a gene-based therapy. In other words, assuming that the moral agent wills the end resulting from the gene-based therapy—namely, the relief of human suffering and disease—does this end legitimate the use of IVF despite the fact that IVF separates the unitive and procreative dimensions of the sexual act?

Here, differentiating the logical structure of the means–end dichotomy may prove useful.⁵¹ Consider the two following scenarios:

1. The moral agent intends to separate the unitive and procreative dimensions of the sexual act in the context of IVF. If IVF is not done, access to the human embryo who has a deleterious genetic anomaly will be impossible. If IVF is done, gene-based therapies can alter the genome of the embryo, thereby removing the genomic information that would result in a fatal pathology.
2. The moral agent intends to alter the deleterious genetic information of the embryo via a gene-based therapy. If the agent does not use IVF—which necessarily separates the unitive and procreative dimensions of the sexual act and is the only means by which to access the preimplantation embryo—the embryo will be afflicted with the anomaly, resulting in human suffering and disease. If IVF is used, the child will be free of the anomaly.

In the latter scenario, the moral agent has a rational knowledge of the end, and the means is necessary only to effect the end. In the former scenario, the means is willed for its own sake, with merely an opportunity to effect the end. In other words, in the second scenario the moral agent wills the use of IVF only because it is the only available means for the end to occur (construed here as alleviating gene-based human suffering and disease); the necessary use of the means ceases when the end has been realized.

In the second scenario, the determination of whether there is an intrinsic contradiction between means and ends depends on how one construes the means. If it is, in principle, possible to pronounce a moral judgment on an exterior action that contains physical evil—e.g., to kill somebody, to utter a falsehood, to separate the unitive and procreative dimensions of the sexual act—irrespective of the end of the inner act of the will, the means may be in intrinsic contradiction to the end.⁵²

Returning to the present context, if the moral evaluation of IVF is based on its inherent separation of the unitive and procreative dimensions of the sexual act rather than on the *telos* to which the act is directed, then its moral evaluation is not dependent on the end that is effected.⁵³ An implication for the means–end dictum

⁵¹ A similar rendering can be found in Kevin Flannery, “What Is Included in a Means to an End?” *Gregorianum* 74.3 (1993): 499–513.

⁵² Janssens, “Ontic Evil and Moral Evil,” 148–149.

⁵³ McCormick, “Proportionalism: Clarification through Dialogue,” 183–185. Here McCormick, responding to a similar critique by John Connery, notes that the manner in

is that where human acts are considered intrinsically evil by virtue of their moral character, no reason can justify the means regardless of the end effected by the means. A re-description of the *telos* option would thus be impermissible in light of traditional Catholic moral teaching.⁵⁴

Yet these traditional moral evaluations of IVF presume an analysis of the conjugal act *solely* as a result of IVF's explicit relationship to infertility. Given the Roman Catholic tradition's commitment to and concern for alleviating human suffering and disease,⁵⁵ it may be possible to explore the moral evaluation of IVF outside this traditional framework: where IVF is not explicitly related to infertility but is necessary to alleviate gene-based human suffering and disease. Here lies the impetus for exploring the possibility of doctrinal development in the Roman Catholic teaching on IVF when IVF is narrowly construed to a preimplantation therapeutic context.

Setting the Context for Doctrinal Development

Before exploring assistance from doctrinal development, it is important to reiterate the central concern: for parents knowingly at risk of passing on debilitating genetic anomalies to their offspring, preimplantation therapeutic IVF may be the only way of curing gene-based disease in their offspring. The point is that if, for a gene-based disease, a genetic intervention exists that is both safe and effective and no clearly positive therapy exists, preimplantation therapeutic IVF could provide a mechanism whereby parents with positive aneuploidy could maintain responsible procreative decisions that avoid known harm to their progeny.⁵⁶ This essay acknowledges that it is not possible to cumulatively provide all possible achievable goods, and that some goods may be proscribed when they can be provided only through means considered illicit (e.g., IVF within the circumstances of a couple's infertility). However, up to now the Roman Catholic tradition has considered its prohibition of IVF only in the circumstances of infertility.

which means are defined as related to the end of the act and the inner will of the agent is relevant in determining the moral quality of the act as a whole; see also Fuchs, "Absoluteness of Moral Terms," 85–86, in which Fuchs elaborates on the distinction between understanding human acts as *one* human action or isolating means as acts in themselves subject to their own moral evaluation separate from the end they serve.

⁵⁴ CDF, *Donum vitae*, II.B.4a..

⁵⁵ See *Catechism*, n. 1506–1509; John Paul II, Message for the Twelfth World Day of the Sick (February 11, 2004); Pontifical Council for Pastoral Assistance to Health Care Workers, *The Charter for Health Care Workers* (Boston: Daughters of St. Paul, 1995) nn. 50–55, 63–65; CDF, *Declaration on Euthanasia* (May 5, 1980); sec. IV; John Paul II, *Evangelium vitae* (March 25, 1995) n. 65; Nebraska Catholic Conference, "Medical-Treatment Decisionmaking: Moral Guidance and Considerations from Catholic Teaching," rev. April 2011, <http://www.nebcathcon.org/>.

⁵⁶ Leroy Walters, "The Ethics of Human Gene Therapy," *Nature* 320.6059 (March 1986): 225–227; Donald S. Rubenstein et al., "Germ-line Therapy to Cure Mitochondrial Disease: Protocol and Ethics of In Vitro Ovum Nuclear Transplantation," *Cambridge Quarterly of Healthcare Ethics* 4.3 (Summer 1995): 329–330; Carole A. Tauer, "Does Human Gene Therapy Raise New Ethical Questions?" *Human Gene Therapy* 1.4 (Winter 1990): 414. For an extended debate of this issue, see Nils Holtug, "Altering Humans: The Case For and Against Gene Therapy," *Cambridge Quarterly of Healthcare Ethics* 6.2 (March 1997): 163–164.

The new genomics era of medicine places IVF in a unique set of circumstances that may change the moral meaning of the act itself. The circumstances of a baby's genetic health ought to serve as a determinative factor in the moral evaluation of preimplantation therapeutic IVF. In this way, the claim can be made that there exists a morally relevant difference between circumstances that focus on the infertile married couple and circumstances that focus on the baby's genetic health. This change of circumstances may be the basis for justifying doctrinal development of Church teaching on IVF.

The Basis for an Application of Doctrinal Development

The Roman Catholic Church is entrusted with the task of guarding, transmitting and explaining the divine revelation which came in Jesus Christ at a given point in history.⁵⁷ The difficulty arises in that the task of the Church is not to merely repeat the original revelation and present it as something "uttered once long ago";⁵⁸ the Church presents revelation as something living, as teachings that are relevant for believers today. In other words, teachings in a certain sense "develop," or "come to be," through the course of Christian history. Doctrinal teachings thus require a connection between the original revelation and the present pronouncement of the magisterium, and the Church needs a theory that can reconcile this development—by differentiation, not separation—integral to the process of teaching authoritatively.⁵⁹ Such a process must focus on the historical plane through which magisterial teachings traverse. This task has a special significance for theology, for if the theologian wishes to make doctrine accessible to today's believer, a connection to the original revelation is necessary to provide meaning and context. Karl Rahner notes that if such a task is for the theologian, then the more formal task of analyzing this connection in general is also required.⁶⁰ In other words, the theologian must consider the "development of dogma as a whole, and not merely the question of the derivation of any individual dogma from its original utterance."⁶¹

To gain a true understanding of doctrine then, "we are forced to make some fundamental reflections on the meaning, the possibility and the limits of such a 'development of dogma' in general."⁶² Yet, in systems of theology there are theological elements that do not change. Such revelations present continuity, "a unity which, despite diversity of detail . . . gathers all the faithful of the Catholic Church to a single thought, one faith, one assent to the Truth which is Christ."⁶³ Somewhere between revelation and the history of theology there comes the development of doctrine.⁶⁴

⁵⁷ Karl Rahner, *Theological Investigations*, vol. 4, trans. Kevin Smyth (Baltimore: Helicon Press, 1966), 3–35.

⁵⁸ *Ibid.*, 3.

⁵⁹ Nicolas Lash, *Change in Focus: A Study of Doctrinal Change and Continuity* (London: Sheed and Ward, 1973), 10–12.

⁶⁰ Rahner, *Theological Investigations*, vol. 4, 4.

⁶¹ *Ibid.*

⁶² *Ibid.*, vol.1, trans. Cornelius Ernst (1961), 39.

⁶³ Henri Rondet, *Do Dogmas Change?* (New York: Hawthorne Books, 1961), 10.

⁶⁴ *Ibid.* See also Avery Dulles, *The Survival of Dogma* (New York: Crossroads, 1987), 17–19.

Capturing historical understanding and discerning continuity across cultural history are not unique features of Catholic moral teaching. But what is unique is the task of reconciling the sociohistorical nature of human truth with a faith that understands revelation as eternal, imperishable truth. Avery Cardinal Dulles notes the necessity of this task for Catholic moral teaching, arguing that “flexibility is not the antithesis of structure, but the condition of preserving [dogmatic teaching] in a changing world. . . . The Church of Christ, precisely because it has a mission to every time and culture, must be able to adapt its message and its structures. If dogma were inflexible it would be brittle; but because dogma has an inbuilt elasticity it can and will survive.”⁶⁵

Cathleen Kaveny’s analysis of the two aspects of development—that which is changed from what was before, and that which remains the same—seems relevant here.⁶⁶ Specifically, if development does not have both elements, teachings remain either static or dynamic with respect to time and place. To avoid either extreme, clarification of the process of doctrinal development is necessary with respect to claims of continuity and change. Any analysis of the theory of development of doctrine appropriately begins with John Henry Cardinal Newman.

John Henry Newman’s Theory of Development of Doctrine

Newman’s *Essay on the Development of Christian Doctrine*, published in November 1845, is based on a question concerning the Roman Catholic treatment of doctrine; namely, if there were substantial changes in doctrine between the early church and the nineteenth-century church, is there a hypothesis that can account for the difficulty of change?⁶⁷ This “difficulty” led Newman to construct a theory that could account for the fact that over the centuries the Roman Catholic Church appears to have undergone many changes without forsaking doctrine’s enduring value.⁶⁸

Newman’s essay was, in part, a result of his own gradual shift in ecclesial perspective.⁶⁹ In other words, because of his concern for the preservation of original doctrinal insight and its incorporation into the present, Newman’s treatment of the topic was historical rather than theoretical.⁷⁰ In fact, his theory of development is offered as a hypothesis, as an alternative to the extremes of immutability on the one hand and of corruption on the other.⁷¹

⁶⁵ Dulles, *Survival of Dogma*, 203.

⁶⁶ M. Cathleen Kaveny, “A Response to John T. Noonan, Jr.,” in *Proceedings of the Fifty-third Annual Convention of the Catholic Theological Society of America*, ed. Michael Downey (Atlanta: Mercer University Press, 1998), 58.

⁶⁷ John Henry Newman, *An Essay on the Development of Christian Doctrine* (London: Longmans, Green, 1909), 30, <http://www.newmanreader.org/works/development/introduction.html>.

⁶⁸ Gerard Magill, “Interpreting Moral Doctrine: Newman on Conscience and Law,” *Horizons* 20.1 (1993): 8; and Ian Ker, ed., *Newman the Theologian* (Notre Dame: University of Notre Dame Press, 1990), 10–16.

⁶⁹ Lash, *Change in Focus*, 83.

⁷⁰ Nicholas Lash, *Newman on Development: The Search for an Explanation in the History* (Shepherdstown, WV: Patmos, 1975), 86.

⁷¹ Lash, *Change in Focus*, 88.

Applying a key epistemological distinction to the theory of doctrinal development, Newman differentiates between implicit and explicit reason.⁷² Using an idea from his “university” sermons, he argues

that, naturally as the inward idea of the divine truth . . . passes into explicit form by the activity of our reflective powers, still such an actual delineation is not essential to its genuineness and perfection. . . . [Nor is the] absence, or partial absence, or incompleteness of dogmatic statements proof of the absence of impressions or implicit judgments, in the mind of the Church. Even centuries might pass without the formal expression of a truth, which had been all along the secret life of millions of faithful souls.⁷³

In other words, implicit reason is the spontaneous interpretation of experience. Explicit reason is the analysis of this spontaneous interpretation into a formal procedure of logic, that is, a matter of induction and deduction.⁷⁴ Implicit reason seeks to consider the evidence for a conclusion in the context of all aspects of the Church’s life, thought, structure, and experience:⁷⁵ “This process . . . by which the aspects of an idea are brought into consistency and form, I call its development, being the germination and maturation of some truth or apparent truth on a large mental field.”⁷⁶ In the context of revelation, then, Newman understood implicit reason to mean a person’s original grasp of what is revealed combined with that person’s impression of the revealed idea.⁷⁷

This view of revelation represents a dramatic shift from the more traditionalist views of doctrine. Revelation for Newman is better understood as an “impression” made on the mind, an “idea” God gives of God-self.⁷⁸ Newman did not differentiate ontologically between the “real idea” and the “object” that the idea “represents.” In this way revelation is intimately tied to the idea from which the revelation originated:⁷⁹ “This process will not be a development, unless the assemblage of aspects, which constitute its ultimate shape, really belongs to the idea from which they start.”⁸⁰

⁷²Ronald Burke, “Newman, Lindbeck and Models of Doctrine,” in *John Henry Newman: Theology and Reform*, ed. Michael E. Allsopp and Ronald R. Burke (New York: Garland, 1992), 19–44; Ker, *Newman the Theologian*, 31; Lash, *Newman on Development*, 86; Newman, “The Theory of Developments in Religious Doctrine,” *Fifteen Sermons Preached before the University of Oxford between A.D. 1826 and 1843* (London: Longmans, 1892), 312–351.

⁷³Newman, “Theory of Developments,” 320–321, 323.

⁷⁴Aiden Nichols, *From Newman to Congar: The Idea of Doctrinal Development from the Victorians to the Second Vatican Council* (Edinburgh: T & T Clark, 1990), 40.

⁷⁵Newman, “Theory of Developments”; Newman, *Prophetic Office of the Church* (London, 1837), 232–234; Lash, *Change in Focus*, 90; and Magill, “Interpreting Moral Doctrine,” 9.

⁷⁶Newman, *Essay on Development*, 38.

⁷⁷Newman, “Implicit and Explicit Reason,” *Fifteen Sermons*, 259.

⁷⁸Newman, “Theory of Developments,” 320–324; Lash, *Change in Focus*, 92; and Burke, “Newman, Lindbeck and Models of Doctrine,” 24.

⁷⁹Lash, *Change in Focus*, 91.

⁸⁰Newman, *Essay on Development*, 38.

Newman thus concentrates on structuring a model of doctrinal change to create unity between the “idea” and the “object of revelation”:⁸¹

The development then of an idea is not like an investigation worked out on paper, in which each successive advance is a pure evolution from a foregoing, but it is carried on through and by means of communities of men and their leaders and guides; and it employs their minds as its instruments, and depends upon them, while it uses them.⁸²

In this way, Newman views the growth and development of “ideas” as a matter of revelation itself, of God’s self-disclosure in history. Ideas for Newman are “modified, or at least influenced, by the state of things” in which they exist, “*dependent in various ways on the circumstances which surround*” them.⁸³ A true development, then, is an addition to the original idea that “illustrates, not obscures, corroborates not corrects, the body of thought from which it proceeds.”⁸⁴

Application to Preimplantation Therapeutic IVF

The application of the theory of development of doctrine rests on a single distinction: the morally relevant difference between the practice of IVF in the circumstances of infertile married couples and the practice of IVF in the circumstances of the future offspring’s genetic health (therapeutic IVF). The main emphasis in the analysis is that, in the Catholic tradition, the circumstances of IVF are crucial for evaluating its moral meaning. The crucial role of circumstances in justifying this doctrinal development can be grasped by comprehending the role of circumstances in the Catholic tradition’s understanding of the meaning of a moral act.

The moral object of the act (the *finis operis* or, literally, the “end of the act”) is the primary consideration concerning the morality of human action.⁸⁵ The object of the act is an objective articulation of the specific behavior in which one freely chooses to engage. Insofar as reason determines that the object itself is ordered to God, the object is good and in conformity with the true good of the person acting. According to Aquinas,

The good or evil of an action, as of other things, depends on its fulness of being or its lack of that fulness. Now the first thing that belongs to the fulness of being seems to be that which gives a thing its species. And just as a natural thing has its species from its form, so an action has its species from its object. . . . And therefore just as the primary goodness of a natural thing is derived from its form, which gives it its species, so the primary goodness of a moral action is derived from its suitable object. . . . The object is not the matter *of which* (a thing is made), but the matter *about which* (something is done); and stands in relation to the act as its form, as it were, through giving it its species.⁸⁶

⁸¹ Lash, *Change in Focus*, 91; Burke, “Newman, Lindbeck and Models of Doctrine,” 28.

⁸² Newman, *Essay on Development*, 38.

⁸³ *Ibid.*, 39, emphasis added.

⁸⁴ *Ibid.*, 200.

⁸⁵ John Paul II, *Veritatis splendor*, n. 79.

⁸⁶ Thomas Aquinas, *Summa theologiae* I-II, q. 18, a. 2.

In other words, the moral object of the act is defined, in part, in relation to the good sought. This good is essential to the act and is primarily and necessarily that to which the action tends by virtue of its very nature. The morality of the human act, then, depends on the object in relation to the corresponding end that the will seeks to achieve.⁸⁷ The object of the act is conceived in relation to the corresponding end because the moral object is considered explicitly as an object of moral choice.⁸⁸

This understanding of the moral object appreciates the fact that a human action that has the same material features as another may have different moral meaning, depending on the circumstances that specify the nature of the act. We turn again to Aquinas: “A circumstance is sometimes taken as the essential difference of the object, as compared to reason; and then it can specify a moral act.”⁸⁹ Circumstances in this reference are to be distinguished from Aquinas’s treatment of circumstances that do not change the moral species of the human act, but rather quantify it differently in terms of additional goodness or otherwise.⁹⁰ The morality of human action depends on correctly distinguishing, from the moral point of view, which circumstances are essential to the correct description of the act. In other words, as Martin Rhonheimer notes in his discussion of *Veritatis splendor*, an essential circumstance is a “circumstance that, in this specific situation, is given and is thus prior to choice. . . . It is recognizable only by reason and it confers on the chosen behavior an inherent, though not simply naturally given, ‘form.’”⁹¹ Or, put more simply, the human act should not be chosen outside the circumstances that make up this “form.”

How is the moral norm prohibiting IVF for the infertile married couple to be interpreted in light of the potential to justify use of preimplantation therapeutic IVF for a baby’s genetic health?⁹² This concern relates directly to John Paul II’s encyclical *Veritatis splendor* (August 6, 1993), where he argues that certain actions are morally wrong from the object of the act:

Reason attests that there are objects of the human act which are by their nature “incapable of being ordered” to God, because they radically contradict the good of the person made in his image. These are the acts which, in the Church’s moral tradition, have been termed “intrinsically evil” (*intrinsece malum*): they are such always and per se, in other words, on account of their

⁸⁷Ibid., q. 8, a. 1, and q. 18, a. 2. *Veritatis splendor* affirms this assertion: “By the object of a given moral act, then, one cannot mean a process or an event of the merely physical order, to be assessed on the basis of its ability to bring about a given state of affairs in the outside world. Rather, that object is the proximate end of a deliberate decision which determines the act of willing on the part of the acting person” (n. 78).

⁸⁸Ibid., q. 18, a. 10.

⁸⁹Ibid., q. 18, a. 5.

⁹⁰Ibid., q. 18, a. 11.

⁹¹Martin Rhonheimer, *The Perspective of the Acting Person* (Washington, DC: Catholic University of America Press, 2008), 71–72.

⁹²This insight is developed from Bernard Hoose in response to *Veritatis splendor* concerning the manner in which moral acts are evaluated. See “Circumstances, Intentions and Intrinsically Evil Acts,” in *The Splendor of Accuracy*, ed. Joseph A. Selling and Jan Jans (Grand Rapids, MI: Eerdmans, 1994), 136–152.

very object, and quite apart from the ulterior intentions of the one acting and the circumstances. Consequently, without in the least denying the influence on morality exercised by circumstances and especially by intentions, the Church teaches that “there exist acts which per se and in themselves, *independently of circumstances*, are always seriously wrong by reason of their object (n. 80, emphasis added).

The very notion of IVF as a moral or immoral act cannot be defined outside the circumstances relevant to its use or the circumstances that make up the essential “form” of the human act; that is, one could not define the moral object of IVF up to now without reference to the infertility of the married couple. Thus, the circumstances of the infertile married couple are not independent of the act itself; rather they are essential to the form of the very object itself. Understood in this way, the Church’s condemnation of IVF is unambiguously related to the essential circumstances of the infertile married couple. The separation of the couple’s procreative unity, the Church teaches, is unjustifiable for the *infertile married couple*: that is, in the morally relevant circumstances of the *infertile married couple*, the *physical* evil of infertility cannot justify the *moral* evil of IVF to remedy this physical evil. *Veritatis splendor* highlights this point: “By the object of a given moral act, then, one cannot mean a process or an event of the merely physical order, to be assessed on the basis of its ability to bring about a given state of affairs in the outside world” (n. 78).⁹³

The infertility of the married couple is precisely the *physical* evil that creates the account of the moral object. But recall that fertility, or the lack of it, is not a determinative factor in the use of or need for preimplantation therapeutic IVF. Therefore, where the moral analysis of preimplantation therapeutic IVF considers as morally relevant not the physical evil of the infertility of the married couple but rather the genetic health of the offspring of parents who are positive for aneuploidy, preimplantation therapeutic IVF must be viewed *as an entirely different moral act*.

The analysis of preimplantation therapeutic IVF in this essay does not question the validity of the prohibition of IVF in the circumstances of an infertile married couple.⁹⁴ This claim is essential to the understanding and use of doctrinal development. Recall that doctrinal development makes the claim that there is a required connection between the original revelation and the pronouncement of the magisterium. This essay does not question the original teaching of the magisterium on the inseparability of the unitive and procreative ends of the marital act, but rather notes that in the magisterium’s use of that insight in the moral evaluation of human acts, the physical evil of infertility and medical advances to overcome that infertility were up to now the only circumstance for the teaching itself. By leaving intact the Church’s teaching on the inseparability of the unitive and procreative dimensions of the sexual act for the infertile married couple, but developing the teaching to address

⁹³ See William F. Murphy, “A Reading of Aquinas in Support of *Veritatis Splendor* on the Moral Object,” *Logos: A Journal of Catholic Thought and Culture* 11.1 (Winter 2008): 102.

⁹⁴ Hoose, “Circumstances, Intentions and Intrinsically Evil Acts,” 136–152; and Louis Janssens, “Teleology and Proportionality: Thoughts about the Encyclical *Veritatis splendor*,” in *The Splendor of Accuracy*, ed. Selling and Jans, 99–113.

a new moral act—namely, preimplantation therapeutic IVF in the morally relevant circumstances of the baby’s genetic health—doctrinal development may reconcile the teaching with the new reality “*by differentiation, not separation from the process of teaching authoritatively.*”⁹⁵

In other words, genetic interventions into the human embryo prior to implantation vis-à-vis preimplantation therapeutic IVF would create a “new historical plane through which the magisterial teaching must traverse”⁹⁶—in this case, the teaching on infertility. The ability of the moral tradition to address this new historical plane would demonstrate what Dulles noted as flexibility, or the moral tradition’s “inbuilt elasticity.”⁹⁷ Newman similarly referenced the process “by which aspects of an idea are brought into consistency and form, yet developed through germination and maturation of some truth.”⁹⁸ In the case at issue, this process would involve preserving the Church’s teaching on IVF in the circumstances of a couple’s infertility while developing the teaching on preimplantation therapeutic IVF in the circumstances of a baby’s genetic health.

This essay has argued that circumstances intrinsic to the object itself, discrete from the circumstances of the infertile married couple, may permit the above separation to be justified. Using the language of physical evil suggests that separating the unitive and procreative ends in IVF may not necessarily be always and everywhere illicit.⁹⁹ In the circumstances of the baby’s genetic health, for example, the essay suggests these different yet essential circumstances may permit the use of preimplantation therapeutic IVF; that is, the moral meaning of IVF as an act is fundamentally defined by discrete circumstances intrinsic to the description of the object itself, and therefore IVF may be justifiable in the circumstances of a baby’s genetic health. In this way, doctrinal development would continue to recognize the original prohibition of IVF in the circumstances of an infertile married couple while considering the justification of IVF for preimplantation therapeutic IVF in the circumstances of a baby’s genetic health.

⁹⁵ Lash, *Change in Focus*, 10–12, emphasis added.

⁹⁶ *Ibid.*, 10.

⁹⁷ Dulles, *Survival of Dogma*, 203.

⁹⁸ Newman, *Essay on Development*, 38.

⁹⁹ Murphy, “Reading of Aquinas,” 102.