

Embryo Adoption and Conscience

To the Editor: In his recent letter (Autumn 2011), Rev. John Ehrlich notes that his principal objection to my earlier letter on human embryo adoption (Summer 2011) is not that the magisterium has definitively rejected such adoption but that magisterial teaching raises such doubts about it that one cannot arrive at a certain conscience, and one is never to act on a doubtful conscience. I thank him for clarifying the issue.

Ehrlich's assertion is that

the Congregation for the Doctrine of the Faith has made a clear statement of doubt as to its moral permissibility. How else are we to attribute the statement that prenatal adoption presents "various problems" not dissimilar to those of heterologous fertilization and surrogate motherhood? While this language does not seem to constitute an outright condemnation, it clearly demonstrates doubt about the legitimacy of this procedure. But May seems to think that this statement is devoid of any real meaning. What then, might we ask, is the reason for the CDF even mentioning prenatal adoption? Is there any meaning to the CDF's subsequent statement that the situation of "abandoned embryos represents a situation of injustice which in fact cannot be resolved"? The CDF goes on to quote Pope John Paul II: "There seems to be no morally licit solution regarding the human destiny of the thousands and thousands of 'frozen' embryos." As we guide the faithful and help them to inform their consciences on this issue, what ought we say in

reference to these words from *Dignitas personae*? Is there not any significance to the statement from the CDF on this issue? May has apparently come to the conclusion that these statements mean nothing.

I believe that Ehrlich is not correct in saying that I have reached this conclusion. I have never, so far as I know, said that these statements mean nothing. Ehrlich, of course, is absolutely correct in saying that one ought never act on a doubtful conscience, and I agree with him and frequently have affirmed this.

It is crucially important to interpret correctly *Dignitas personae* n. 19, to which Ehrlich refers, because we differ greatly in our understanding of this text. The passage is the one in which this magisterial document says that prenatal adoption presents "various problems not dissimilar to" those of heterologous fertilization and surrogate motherhood. Ehrlich interprets this as raising serious doubts about prenatal adoption.

The passage referred to reads in full as follows: "It has also been proposed, solely in order to allow human beings to be born who are otherwise condemned to destruction, that there could be a form of '*prenatal adoption*.' This proposal, praiseworthy with regard to the intention of respecting and defending human life, presents however various problems not dissimilar to those mentioned above."

But what are the "various problems not dissimilar to those mentioned above"? If we read the paragraph immediately before this one, we find these problems identified, for in it we read, "The proposal that these embryos could

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

This shows, I believe, that the "problems" noted are not *moral problems*. If this interpretation is correct, then it follows that reference to these problems by the magisterium does not "raise doubts" about the prenatal adoption of orphaned and abandoned human embryos. I admit that the proper interpretation of the passage is debated by scholars who are all loyal to the magisterium. However, Kevin Flannery, SJ, professor of philosophy at the Pontifical Gregorian University and a consultant to the Congregation for the Doctrine of the Faith, sent me an e-mail on December 11, 2008, shortly after promulgation of *Dignitas personae* in which he affirmed, "The previous paragraph simply says that there are or could be problems ('medical, psychological, legal') with embryo adoption. *I don't think that anyone denies this either*" (my emphasis). Flannery sent me this e-mail because he knew that I wanted to make sure that I properly understood the teaching of *Dignitas personae*.

The question of the morality of such adoption is, as Ehrlich admits, an open question, as is the morality of GIFT—another issue on which persons loyal to the magisterium differ greatly. Just as people can and do use GIFT as a way to "assist" the conjugal act to achieve its procreative end, so people can and do prenatally adopt abandoned and orphaned human embryos, imprisoned in what Jérôme Lejeune called "concentration cans," in order to save their lives. Moreover, they are not "generating life" and thus violating their sacred obligation to become mothers and fathers only through each other, nor is the woman into whose womb the already generated human baby is transferred serving as a "surrogate" mother. The life transferred to her womb from its "concentration can" has already been "made" in the laboratory and is thus not "generated" by her, and she is not

nurturing it *for the sake of others, but only for the child's own sake*.

Since magisterial teaching does *not* raise doubts about prenatal adoption and since the morality of such adoption is still an open question that the magisterium has not closed, then couples who have already prenatally adopted abandoned and orphaned human babies in order to save their lives have not violated any magisterial teaching, and the Catholic scholars who have taught and are teaching that doing so is compatible with magisterial teaching are not violating that teaching.

I will never intentionally deny magisterial teaching. I am thus ready immediately to repudiate my position on the prenatal adoption of abandoned and orphaned human embryos cryopreserved in "concentration cans" if a demonstrative argument shows that I am denying magisterial teaching by holding this position. I definitely do not want to take a laxist moral position on an issue already settled by the magisterium, and do not think that I have done so. I admit that I am not the best judge in my own case and that, like many, I may be too attached to a position because *I* hold it, and may continue to do so because I have closed my heart to the truth. But I know that many Catholic scholars who are far better than I and are persons of great humility hold the same position. I am grateful to Ehrlich for raising this issue and respect his position, but I think it is not accurate.

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To the Editor: In his letter in the Summer 2011 issue, William E. May articulated his position that since the Congregation for the Doctrine of the Faith left the question of prenatal adoption open, couples can in good conscience choose to adopt abandoned embryos. He also expressed a willingness to

amend or reject his position if it was found to be wanting. I would like to briefly make the case for such an amendment.

Catholic moral theology recognizes that every human act has three components: the object chosen, the intention, and the circumstances. For an act to be moral, all three elements must be good. In addressing prenatal adoption, the CDF clearly praises the intention of the couple who might choose it “solely in order to allow human beings to be born.” (*Dignitas personae*, n. 19). About this there is no dispute. As regards the object, I agree with Dr. May and others that the CDF does not offer a definitive negative judgment—it is still open. The result of this fact is that ethicists are still free to debate the intrinsic moral quality of this act itself. It does not necessarily follow, however, that couples may choose this object in good conscience. The reason is simple: circumstances can vitiate a human act and render illicit what may otherwise have been a laudable human act. What in theory can be a permissible human act may, because of circumstances, be illicit to perform in reality.

To simplify the matter, let us assume that the object chosen by the act of prenatal adoption is a good object. I believe Dr. May would agree that any proposed human act with a good object and intention can be illicit if what surrounds the actor are morally problematic circumstances that are intractable. In the case of prenatal adoption, it seems that the most plausible reading of *Dignitas personae* n. 19 is that the “problems of a medical, psychological and legal nature” are such a set of circumstances. These circumstances form such a bastion of natural and moral evils that the CDF considers them “a *situation of injustice which in fact cannot be resolved*” (original emphasis). Such problems might include the death of the embryo when thawed and rehydrated, cooperation with an evil industry, scandal, and the treatment of these embryos by the law. Because these circumstances cannot be resolved by a couple at this time, there “seems to be no morally licit solution” to the absurd fate of these tiny frozen prisoners within the concentration can.¹ As Edward J. Furton has aptly summarized, “Embryo

adoption may be permissible as an idea even though it is impossible in practice” (“Embryo Adoption Reconsidered,” Summer 2010).

For this reason, and even though the objective moral quality of prenatal adoption itself remains a matter of dispute, until all of the significant circumstantial problems involved in prenatal adoption are remediated, a pastor of souls must counsel against prenatal adoption to any couple expressing interest in this act. It seems to me that in the current milieu, prenatal adoption is morally impossible in practice and the obligation of a pastor and couple would change only if three criteria were met. First, the primary evil of the production of human embryos by the IVF industry must be discontinued permanently, with the strongest possible legal assurances. Second, a pastor and a couple must attain moral certainty that they would not be complicit in the aforementioned circumstantial problems that remain after production of embryos is halted. Third, as Furton notes, such adoption would have to be through a Catholic prenatal adoption agency that honored the rights of the embryo and the goods of marriage and the marital act.

The language chosen by the Congregation indicates a firm conviction that the first two criteria are exceptionally unlikely to occur, rendering moot the third criterion. This interpretation also explains the CDF statements that this issue “cannot be resolved” and that there “seems to be no morally licit solution” to the matter. Until such a time that these criteria are met, I believe Dr. May’s analogy between GIFT and prenatal adoption is a faulty one. Dr. May holds that GIFT and prenatal adoption are analogous, and I grant that in many respects they are. He argues that because prenatal adoption is analogous to GIFT and since couples may still utilize GIFT, couples may also choose prenatal adoption. I share Dr. May’s contention that GIFT substitutes for the marital act but that “one can in good Catholic conscience make use of this procedure” because it is both an open question and, I would add, does not seem to be surrounded by mitigating circumstances. For the reasons articulated in the preceding paragraphs, I do

not agree that prenatal adoption and GIFT are analogous, because there are mitigating circumstances that make prenatal adoption, in the words of Furton, “virtually intrinsically immoral.” Furthermore, *Dignitas personae* does not even mention GIFT. This is not the case with prenatal adoption, a topic about which the CDF had much to say in the negative. Though the acts are analogous in many respects, they are not analogous as regards the key question at hand: may a couple choose the act in good conscience? The most tenable reading of *Dignitas personae* is that the CDF considers the circumstances surrounding prenatal adoption to be so troubling that there is no truly human solution to the problem.

For these reasons, and until such a time that the evil circumstances surrounding this object and praiseworthy intention are resolved, a couple may not, in good conscience choose prenatal adoption.

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¹See, for example, John S. Grabowski and Christopher Gross, “*Dignitas personae* and the Adoption of Frozen Embryos” (Summer 2010): “Hence, if this act is to be regarded as morally vitiated or contrary to prudence, it must be because of the circumstances in which it is pursued. In other words, while embryo adoption can be regarded as morally permissible in itself if undertaken with a good intention, current circumstances render the practice morally illicit.”

To the Editor: I would like to respond to Rev. John Ehrich’s two recent letters. In his first (Summer 2011), Rev. Ehrich writes, “While I realize that the debate about human embryo adoption must continue in academia, it is my assertion that it ought not continue in practice.” He then argues that “the clearest reason why embryo adoption cannot be recommended at this time is because it is impossible to arrive at a certain conscience about the Church’s teaching on this matter.” In his second letter (Autumn 2011), Rev. Ehrich attempts to explain that

it is impossible for a person contemplating embryo adoption to arrive at a certain conscience about the procedure because “the Congregation for the Doctrine of the Faith has made a clear statement of doubt as to its moral permissibility.” He therefore concludes that “if a person is truly seeking to form his conscience according to the mind of the Church, how could he arrive at a greater degree of certainty than the Church herself?”

It is my view, however, that the Church has not forbidden the practice of embryo adoption and that it may very well be Rev. Ehrich himself who has erroneously arrived at a greater degree of certainty than the Church herself.

According to the *Catholic News Service* article published on December 12, 2008—the very day *Dignitas personae* was publicly released by the Congregation for the Doctrine of the Faith—Archbishop Rino Fisichella, the then-president of the Pontifical Academy for Life, told reporters at the Vatican’s official press conference that “the discussion is still open” on the matter of embryo adoption. In addition, the CNS article reported that “the Vatican has not ruled out the possibility of embryo adoption” and even specifically stated that “the Vatican did not rule out the practice.”¹

In its own carefully worded statement of December 2008, the United States Conference of Catholic Bishops reinforced the Vatican’s clear position on the matter of embryo adoption, stating that while *Dignitas personae* “raises cautions and problems” about proposals for the adoption of abandoned frozen embryos, it “does not formally make a definitive judgment against them.”²

I fully agree with Rev. Ehrich’s statement that “if a person is truly seeking to form his conscience according to the mind of the Church, how could he arrive at a greater degree of certainty than the Church herself?” Clearly, a person with a well-formed conscience should never knowingly or willingly prohibit what the Church herself has not prohibited. These indeed are words of wisdom for all faithful Catholics, including Rev. Ehrich himself.

Thus, Catholic couples contemplating embryo adoption should be reassured that

they can indeed attain a certain conscience that the Church's teaching does not forbid the practice of embryo adoption at this time.

To assert the contrary is, quite simply, contrary to the Church's current teaching on embryo adoption.

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¹Cindy Wooden, "Adopting Embryos Raises Moral Questions, Vatican Officials Say," *Catholic News Service*, December 12, 2008, <http://catholicnews.com/data/stories/cns/0806229.htm>, emphasis added.

²U.S. Conference of Catholic Bishops, "Questions and Answers: The Instruction 'Dignitas personae: On Certain Bioethical Questions' (December 9, 2008), 2, http://old.usccb.org/comm/Dignitaspersonae/Q_and_A.pdf.

Scientific Certitude, Moral Certitude, and Plan B

To the Editor: I thank Deacon Tom Davis for his continuing written exchange on the mechanism of action of Plan B (letter, Summer 2011). It is important that we reach some consensus that will allow the Catholic physician and other health professionals of good conscience to virtuously minister to victims of rape.

I would like to begin by clarifying my appeal to scientific certitude in my published writings on the ethical use of Plan B in a rape protocol. As I understand it, there are four kinds of certitude available to us.¹ First, metaphysical certitude is the certitude with which self-evident and necessary truths are known. That the whole is greater than the part is known with metaphysical certitude. Second, physical certitude is the certitude with which the predictions of the laws of nature are known. These laws are not absolutely unchangeable but are subject to the will of the Creator. They are not self-evident but are discoverable as laws by experience. It is with physical certitude that a man knows that he will die, that food will sustain life,

and that the moon rotates around the earth. Third, moral certitude is the certitude with which judgments are formed concerning human character and conduct. Since the laws of human nature are not universal but are subject to exceptions, moral certitude is not unalterable. Nonetheless, it allows the acting person in the absence of absolute clarity not only to make prudent and sound moral judgments but also to act according to them. Finally, to these three classical notions of certitude, I think it is important, especially when we are discussing the findings of contemporary science, to add another level of certitude to the mix, a level of certitude that I have called scientific certitude. When other biologists and I claim that we are certain that a particular gene behaves in a particular way, we are claiming that the probability that this scientific finding could be attributed to chance rather than to law is less than 5 percent, the accepted threshold level of statistical significance in the life sciences.

As I explain to my biology students here at Providence College, it is very difficult for a life scientist to claim either metaphysical or physical certitude for his findings, because we can never completely rule out the exception to the rule. There could always be a yeast cell out there that will not die when exposed to an experimental protocol that has to date killed all yeast cells (my students and I are investigating the genetics behind yeast cell suicide), and there could always be a patient out there who will react negatively to a drug of interest that has to date produced only beneficial effects. However, as the evidence mounts in favor of a hypothesis—especially convergent data from independent laboratories using different techniques and methods—it becomes increasingly unlikely that rival hypotheses are true. To claim scientific certitude, I propose, is to claim that one has concluded that it is improbable that a future scientific result will invalidate one's current scientific explanation. Therefore, in response to Deacon Davis, I maintain that there is no contradiction between my claim that it is "unlikely" that Plan B is either an interceptive or an abortifacient and my claim that I can affirm this with scientific certitude.

Why do I think that it is unlikely that Plan B is either an interceptive or an abortifacient? There is no better summary of the scientific evidence than the recent (March 2011) statement of the International Federation of Gynecology and Obstetrics and the International Consortium for Emergency Contraception on the mechanism of action of Plan B.² In their statement, these two organizations summarize the published evidence demonstrating that Plan B is neither an interceptive nor an abortifacient as follows:

- Two studies have estimated effectiveness of LNG ECPs [levonorgestrel-only emergency contraceptive pills like Plan B] by confirming the cycle day by hormonal analysis. (Other studies used women's self-reported cycle dates).³ In these studies, no pregnancies occurred in the women who took ECPs before ovulation; pregnancies occurred only in women who took ECPs on or after the day of ovulation, providing evidence that ECPs were unable to prevent implantation.
- A number of studies have evaluated whether ECPs produce changes in the histological and biochemical characteristics of the endometrium.⁴ Most studies show that LNG ECPs have no such effect on the endometrium, indicating that they have no mechanism for preventing implantation. One of these studies found that following administration of double the standard dose of LNG, there are only minor or no alterations in endometrial receptivity.⁵ One study found a single altered endometrial parameter only when LNG was administered prior to the LH surge, at a time when ECPs inhibit ovulation.⁶
- One study showed that levonorgestrel did not prevent the attachment of human embryos to a simulated (in vitro) endometrial environment.⁷
- Animal studies demonstrated that LNG ECPs did not prevent implantation of the fertilized egg in the endometrium.⁸
- Two studies of women who became pregnant in cycles when they took LNG ECPs

found no difference between pregnancy outcomes of women who had taken LNG ECPs and those who had not. Variables included miscarriage, birth weight, malformations, and sex ratio, indicating that LNG ECPs have no effect on an established pregnancy even at very early stages.⁹

Significantly, in light of this evidence, the International Federation of Gynecology and Obstetrics and the International Consortium for Emergency Contraception—neither of which can be legitimately called a pro-life or a Catholic organization—conclude the following:

- Inhibition or delay of ovulation is LNG ECP's principal and possibly only mechanism of action.
- Review of the evidence suggests that LNG ECPs cannot prevent implantation of a fertilized egg. Language on implantation should not be included in LNG ECP product labeling.
- The fact that LNG ECPs have no demonstrated effect on implantation explains why they are not 100 percent effective in preventing pregnancy and are less effective the later they are taken. Women should be given a clear message that LNG ECPs are more effective the sooner they are taken.
- LNG ECPs do not interrupt a pregnancy (by any definition of the beginning of pregnancy). However, LNG ECPs can prevent abortions by reducing unwanted pregnancies.

Clearly, one can quibble about the limitations and flaws of a particular study or a particular research approach—and biologists do this routinely—but what is impressive, in my view, is the cumulative data from a growing number of independent research groups using different methods and study protocols, which together lead to the research findings summarized by FIGO and ICEC. Of interest, the primary findings of the FIGO and ICEC white paper echo the conclusions of two other recent scientific reviews of the mechanism of action of levonorgestrel, which also conclude that the drug does not have a

postfertilization effect when it is used as an emergency contraceptive.¹⁰

Deacon Davis and his colleagues could reply that these numerous studies do not address their specific concerns that Plan B is an abortifacient in a particularly unique way, a proposal that I will call the preovulatory use–postovulatory abortifacient hypothesis. According to this hypothesis, levonorgestrel can act as interceptive when it is administered during a brief period prior to ovulation before what is called the LH surge (days LH -5 to LH -2). Here, the drug blunts the LH surge that is normally required for ovulation, but the blunting of the LH surge is not enough to prevent ovulation. Thus, an egg is released. However, and this is the crux of the hypothesis, its proponents propose that the blunting of the LH surge would lead to hormonal changes that would detrimentally alter the endometrium, preventing—if the egg is fertilized—proper implantation of the embryo. According to Deacon Davis in an earlier letter (Winter 2010), the scientific debate over the viability of this hypothesis remains unresolved.

In response, there are indeed data that indicate that levonorgestrel, when administered after the onset of the LH surge, is often unable to prevent ovulation.¹¹ Moreover, it is clear that when ovulation occurs, Plan B does in fact blunt the LH surge.¹² However, as I have already noted in my published work in the *NCBQ*, there are also reliable data that indicate that *the blunting of the LH surge by Plan B taken prior to the surge (LH -2), even when ovulation occurs, is not accompanied by the hormonal changes that would interfere with endometrial function.*¹³ As Durand et al. (2010) conclude in their study of the effects of levonorgestrel ingested two days prior to the LH surge (LH -2), “The apparently normal E2 and P4 production during the luteal phase suggested a normal luteinization and corpus luteum function in LNG-ov cycles [reproductive cycles in which LNG administration still leads to ovulation], which agree with the lack of deleterious effects of this hormonal contraceptive regimen on the endometrium.”¹⁴ This finding seriously undermines the tenability of the preovulatory

use–postovulatory abortifacient hypothesis, which requires that the blunting of the LH surge lead to hormonal deficiencies that interfere with endometrial receptivity. It is especially in light of these recent findings that I claim that it is very unlikely that Plan B is an abortifacient in the manner that Deacon Davis and his colleagues have hypothesized: *It would be physiologically difficult, if not impossible, for Plan B to impair the endometrium, making it unfit for implantation of an embryo, if it does not alter the postovulation hormonal profile of a woman when it is taken prior to the LH surge.*

How then do we explain the absence of pregnancies in women who have ovulated despite their ingestion of Plan B?¹⁵ One real possibility emerges from the scientific observation that eggs that are released from the ovary when the LH surge is blunted are defective. They are hard to fertilize.¹⁶ Whichever explanation we use to account for the absence of these pregnancies, in light of the findings described in the Durand et al. (2010) paper, we have to rule out explanations that involve hormonal disruptions that corrupt endometrial function. In other words, we have to rule out the preovulatory use–postovulatory abortifacient hypothesis.

Finally, I need to address the link between scientific certitude and moral certitude. In view of the numerous scientific studies I have summarized here, I claim that we can be scientifically certain that Plan B is neither an interceptive nor an abortifacient when it is taken as an emergency contraceptive. In other words, I claim that the *cumulative* scientific data from numerous laboratories using a diverse range of scientific approaches and protocols—especially the relatively recent finding that Plan B does not alter the postovulatory hormonal profile of a woman who takes the drug prior to her LH surge—together make a strong case for the proposal that it is very unlikely that Plan B has a post-fertilization mechanism of action.¹⁷

But is this scientific certitude enough for moral certitude? I am not sure what Deacon Davis means when he talks about moral certitude, but in my view, from my reading of the Catholic moral tradition, moral certitude

includes the certitude that allows the acting person to act even when he thinks that it is possible but unlikely that he is mistaken. This certitude is what moralists have called imperfect moral certitude.¹⁸ According to the consensus of the Catholic moral tradition, it is sufficient to act if one has only imperfect moral certitude.¹⁹ As St. Thomas Aquinas explains, “For in human acts, on which judgments are passed and evidence required, it is impossible to have demonstrative certitude, because they are about things contingent and variable. Hence the certitude of probability suffices, such as may reach the truth in the greater number of cases, although it fail in the minority” (*ST* II-II, q. 70, a. 2).

Significantly, imperfect moral certitude is the type of certitude that would allow an individual to act on the basis of scientific research, even though he may worry that an unlikely but future, still unpublished scientific finding could undermine his current settled certainty regarding the morality of his actions. It is a certitude grounded on the judgment that the weight of the scientific evidence is such that it is unlikely that the results of a future scientific study would invalidate the scientific conclusions drawn from the available already-published data. In other words, it is a moral certitude that emerges from scientific certitude.

Consequently, I think that one of my primary responsibilities as a Catholic priest, who in the providence of God is also a biologist and a moral theologian, is to provide the Catholic physician and other health professionals of good conscience with the scientific information that they need to make the prudent moral judgments required for them to virtuously minister to victims of rape. However, using both prayer and reason, each physician then has to evaluate the scientific evidence I have summarized above and the argument that I have made for Plan B’s non-abortifacient mechanism of action in order to determine if he or she could prudentially administer the emergency contraceptive to a victim of sexual assault who requests it in a moment of crisis. For some—and from my own conversations with Catholic physicians, for most—the scientific findings described

above and the argument I have made will be enough for them to administer Plan B to a survivor of rape without the fear that they are contributing in any way to an abortion. For others, the science will not yet be enough. For a few, the science will never be enough.

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¹The author’s definitions of *metaphysical*, *physical*, and *moral certitude* are taken from “Certitude,” by M. J. Ryan, in *The Catholic Encyclopedia* (New York: Appleton, 1908), <http://www.newadvent.org/cathen/03539b.htm>.

²International Federation of Gynecology and Obstetrics and International Consortium for Emergency Contraception, “Mechanism of Action: How Do Levonorgestrel-Only Emergency Contraceptive Pills (LNG ECPs) Prevent Pregnancy?” March 2011, www.cccinfo.org/UserFiles/File/MOA_FINAL_2011_ENG.pdf.

³G. Noe et al., “Contraceptive Efficacy of Emergency Contraception with Levonorgestrel Given Before or After Ovulation,” *Contraception* 81.5 (May 2010): 414–420; and N. Novikova et al., “Effectiveness of Levonorgestrel Emergency Contraception Given Before or After Ovulation: A Pilot Study,” *Contraception* 75.5 (February 2007): 112–118.

⁴L. Marions et al., “Emergency Contraception with Mifepristone and Levonorgestrel: Mechanism of Action,” *Obstetrics and Gynecology* 100.1 (July 2002): 65–71; M. Durand et al., “On the Mechanisms of Action of Short-Term Levonorgestrel Administration in Emergency Contraception,” *Contraception* 64.4 (October 2001): 227–234; C. X. Meng et al., “Effect of Levonorgestrel and Mifepristone on Endometrial Receptivity Markers in a Three-Dimensional Human Endometrial Cell Culture Model,” *Fertility and Sterility* 91.1 (January 2009): 256–264; C. X. Meng et al., “Effects of Oral and Vaginal Administration of Levonorgestrel Emergency Contraception on Markers of Endometrial Receptivity,” *Human Reproduction* 25.4 (April 2010): 874–883; W. A. Palomino et al., “A Single Midcycle Dose of Levonorgestrel Similar to Emergency Contraceptive Does Not Alter the

Expression of the L-Selectin Ligand or Molecular Markers of Endometrial Receptivity," *Fertility and Sterility* 94.5 (October 2010): 1589–1594.

⁵Meng et al., "Effects of Oral and Vaginal Administration of Levonorgestrel Emergency Contraception."

⁶M. Durand et al., "Late Follicular Phase Administration of Levonorgestrel as an Emergency Contraceptive Changes the Secretory Pattern of Glycodelin in Serum and Endometrium During the Luteal Phase of the Menstrual Cycle," *Contraception* 71.6 (June 2005): 451–457.

⁷P. G. Lalitkumar et al., "Mifepristone, but not Levonorgestrel, Inhibits Human Blastocyst Attachment to an In Vitro Endometrial Three-dimensional Cell Culture Model," *Human Reproduction* 22.11 (November 2007): 3031–3037.

⁸A. L. Müller et al., "Postcoital Treatment with Levonorgestrel Does Not Disrupt Postfertilization Events in the Rat," *Contraception* 67.5 (May 2003): 415–419; M. E. Ortiz et al., "Postcoital Administration of Levonorgestrel Does Not Interfere with Post-fertilization Events in the New World Monkey *Cebus apella*," *Human Reproduction* 19.6 (June 2004): 1352–1356.

⁹L. Zhang et al., "Pregnancy Outcome after Levonorgestrel-only Emergency Contraception Failure: A Prospective Cohort Study," *Human Reproduction* 24.7 (July 2009): 1605–1611; M. De Santis et al., "Failure of the Emergency Contraceptive Levonorgestrel and the Risk of Adverse Effects in Pregnancy and on Fetal Development: An Observational Cohort Study," *Fertility and Sterility* 84.2 (August 2005): 296–299.

¹⁰Kristina Gemzell-Danielsson, "Mechanism of Action of Emergency Contraception," *Contraception* 82.5 (November 2010): 404–409; V. Leung et al., "Mechanisms of Action of Hormonal Emergency Contraception," *Pharmacotherapy* 30.2 (2010): 158–168.

¹¹Task Force on Postovulatory Methods of Fertility Regulation, "Randomized Controlled Trial of Levonorgestrel Versus the Yuzpe Regimen of Combined Oral Contraceptives for Emergency Contraception," *Lancet* 352.9126 (August 1998): 428–433; H. von Hertzen et al., "Low Dose Mifepristone and Two Regimens of Levonorgestrel for Emergency Contraception: A WHO Multicentre Randomised Trial," *Lancet* 360.9348 (December 7, 2002): 1803–1810; A. O. Arowajolu et al., "Comparative Evaluation of the Effectiveness and Safety of Two Regimens of Levonorgestrel for Emergency Contraception in Nigerians," *Contraception* 66.4 (October 2002): 269–273; Noe et al., "Contraceptive Efficacy of Emergency Contraception," 414–420; G. Noe et al., "Contraceptive Efficacy of Emergency Contraception with Levonorgestrel Given Before or After Ovulation,"

Contraception 84.5 (November 2011): 486–492.

¹²M. Durand et al., "Hormonal Evaluation and Midcycle Detection of Intrauterine Glycodelin in Women Treated with Levonorgestrel as in Emergency Contraception," *Contraception* 82.6 (December 2010): 526–533.

¹³Ibid.

¹⁴Ibid., 531–532.

¹⁵Noe et al., "Contraceptive Efficacy of Emergency Contraception," (2010), 414–420; Noe et al., "Contraceptive Efficacy of Emergency Contraception," (2011).

¹⁶W. M. Verpoest et al., "Relationship between Midcycle Luteinizing Hormone Surge Quality and Oocyte Fertilization," *Fertility and Sterility* 73.1 (January 2000): 75–77.

¹⁷Often moral theologians and other non-scientists who have read my work or who have listened to me speak about the mechanism of action of Plan B have told me that, in their opinion, the weight of the scientific evidence "demonstrates" or "strongly indicates" that Plan B is not and cannot be an abortifacient. As I explained earlier, however, as a biologist, I hesitate to make such a strong affirmative statement about the mechanism of action of Plan B because I can never rule out the possible rare case of a woman whose biological response to LNG differs so significantly from the vast majority of women who take the drug that she would experience the detrimental endometrial effects that heighten the risk of an abortion.

¹⁸Thomas Slater, *A Manual of Moral Theology*, vol. 1, 5th ed. (London: Burns Oates and Washbourne, 1925), 31–32.

¹⁹Ibid.

Vital Conflicts

To the Editor: In the Summer 2011 issue, the reply of Mary Anderson and her colleagues to my response to their article "Ectopic Pregnancy and Catholic Morality" (Spring 2011) was for me a huge disappointment, as I share their concern to uphold the sanctity of human life. In the following I will briefly spell out the main reasons for my disappointment.

The reply begins by responding to a charge which I have never made. Anderson et al. write, "It is difficult for us to understand why Fr. Rhonheimer should take offense at our discussion of his theses if that is what the [Congregation for the Doctrine of the Faith] intended when it gave permission for

his book *Vital Conflicts in Medical Ethics* to be published in its original German version in 2000.” I did not blame Anderson et al. for critically discussing my theses at all. I welcome critical discussion, but I object to their insinuation that, by criticizing the 1884 and 1889 decrees of the Holy Office, I was unfaithful and disobedient to the magisterium of the Church. To make clear to readers that I was instead supporting the magisterium, I referred to the CDF’s request to publish my study. Instead of admitting this, Anderson et al. renew the charge by blaming me for describing on page 78 of *Vital Conflicts* these decisions of the Holy Office as problematical—as if the CDF, before asking me (not giving “permission,” as Anderson et al. write) to publish this text, had not been aware of my critical stance toward these decrees! Yet I never called these decrees “a cause for confusion,” as Anderson et al. assert. On page 78 of *Vital Conflicts* I am referring to the confusion of *moral theologians*, namely, of P. Eschbach, concerning the concept of “direct killing,” and I am suggesting therewith that the decrees were the *consequence* (not the cause) of such confusion. My extended argument that the decrees were the consequence of confusion among moralists is precisely what the CDF wanted to be published by me and discussed by other scholars (which, of course, implies that the CDF envisaged at least the *possibility* of these decrees being overruled by further decisions of the magisterium). This is why it is illogical that Anderson et al. now refer to these decrees *as an argument from authority*.

Second, in the above-quoted sentence, Anderson et al. not quite fairly—and again contrary to the truth—repeat their mistaken charge that the CDF gave only the permission for the book “to be published in its original German version in 2000.” Anderson et al. then add, in a seemingly generous mood, “But we’ll take him at his word that the permission was also extended to translations of the book.” This, as well, is an *ad hominem* remark, because it includes and even presupposes that what I said in the preface of the book was something different than it was, thus trying to cast doubt upon my credibility.

It is as if I said to someone, “I’ll take you at your word that you did not betray your wife,” which of course presupposes that I think there are reasons to believe that he actually did betray her.

Third, Anderson et al.’s reply seems to me to reveal that they do not really understand what is at issue. So they say (under number 2), “The very question under discussion, however, is whether such cases of vital conflict allow for the direct killing of the embryo.” And under number 3, “If this is not the direct killing of the fetus, then what is it?” Now, the main topic of *Vital Conflicts* is precisely the clarification of the moral category of “direct killing.” Anderson et al. do not engage in this discussion, but merely reject my solution by referring to their own understanding of directness. My arguments in favor of a different understanding of “direct” as a moral category, however, are neither mentioned nor discussed, or they are referred to in a distorted way. So Anderson et al. affirm under number 3, “The key point is that intentions do not and cannot change the moral object in cases of intrinsically evil acts,” suggesting that according to my view, intentions (further or remote) actually can change the moral object and that therefore my view is in opposition to *Veritatis splendor*.

But this is mere rhetoric. The question I am dealing with is precisely the question of the moral object of craniotomy in cases of vital conflict, not whether craniotomy (as an evil action by its object) can be rendered morally good by a laudable intention! That Anderson et al. do not even seem to understand what is at issue is proved by their strange assertion (under number 5) that I insist that “the choice by a physician to perform a craniotomy is *praeter intentionem* (beside the intention).” They further write, “We do not believe the choice to perform a craniotomy is *praeter intentionem*.” But this description of what is at issue is again completely mistaken. How can what is chosen be “beside the intention,” and how could I possibly defend such a claim? My argument is that neither the *choice* of craniotomy nor *craniotomy* itself is *praeter intentionem*, but that in a case of vital conflict, in the choosing and performing

of a craniotomy, *the killing (or the death) of the child* is not chosen or intended and is thus beside the intention.

According to my view, therefore, it is not the good intention of saving the mother's life which makes an otherwise morally evil act good, as Anderson et al. suggest that I affirm; it is instead that, in the very case of vital conflict, it is simply *the lack of a choice of the baby's death* (as a means to save the mother) which prevents the chosen act from being a morally evil act (in this case, an act against justice). As a *consequence*, the only remaining action-defining intentionality is saving the mother's life (but this intention is not the *cause* of the act's not being evil; for the details of the argument, I refer to my book).¹ Exactly at this point should the debate begin. Yet Anderson et al. do not seem to have understood how my argument runs.

Finally, a word on the question of the definition of sin and Anderson et al.'s insistence on their view "that the fundamental definition of sin is 'an utterance, a deed, or a desire contrary to the eternal law.'" Here they refer to the *Summa theologiae* I-II, q. 72, a. 1, and to the *Catechism of the Catholic Church* n. 1849. Anderson et al. again insinuate that I have *denied* that contrariness to eternal law is a fundamental definition of sin. They thereby simply ignore what I have pointed out in my first response, namely, that according to Aquinas (I-II, q. 71, a. 6) the eternal law is the first or ultimate, but not a "homogeneous" measure of human acts: this because *it is not known by us* except by natural reason (natural law) or divine revelation. While in the order of being the eternal law is the most fundamental (it is the very reason of God, ordering all things to their end), in the order of knowledge, and thus *as a moral measure for human conscience*, it is simply non-existing as long as it is not known either by human natural reason or by additional revelation. (I refer again to I-II, q. 19, a. 4, ad 3).

This is why Aquinas, as I mentioned, teaches (in I-II, q. 71, a. 6, to which Anderson et al. refer in their original article) that the "immediate and homogeneous" measure (*regula propinqua et homogenea*) of human actions is human reason (*ipsa humana ratio*);

and this is also why the very n. 1849 of the *Catechism of the Catholic Church* invoked by Anderson et al. affirms in the very beginning (before referring to the Augustinian definition of sin as contrariness to the eternal law), that "sin is an offense against reason." This brings us to the level of natural law and the moral virtues—as, for example, justice—which is the level proper to the moral analysis of human acts in the tradition of Aquinas. Nothing in this approach leads one to "give way to subjective standards" as Anderson et al. suggest.

They simply ignore, or unreasonably discard, sound Thomistic methodology in moral philosophy and theology, and they also seem to ignore that Pope John Paul II, in his encyclical *Evangelium vitae*, n. 57, wrote that the "deliberate decision to deprive an innocent human being of his life . . . either as an end in itself or as a means to a good end" is "always morally evil" because "*it contradicts the fundamental virtues of justice and charity*" (my emphasis); for this reason he wrote that it is a "grave act of disobedience to the moral law" and, in consequence "to God himself, the author and guarantor of the law." This is how moral reasoning proceeds: when we come to know that something is against justice (and therefore also against charity), we also know that it is against the moral law—both natural and evangelical—and thus also against God as the origin of this law. But from the Eternal Law *as it is in the mind of God*, we cannot deduce anything, because we simply do not know it. Even if the Eternal Law is the foundation and origin of another moral standard, we cannot refer to it in a moral argument because, as Aquinas emphasizes, we know it only as far as it manifests itself through natural human reason or supernatural revelation.

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¹The same mistake is to be found in Fr. Basil Cole's letter (Summer 2011), which immediately follows that of Anderson et al.; see my remarks in my article "Vital Conflicts, Direct Killing and Justice" (Autumn 2011), 537.

Dr. Anderson et al. reply: We are grateful to Fr. Rhonheimer for his continued interest in the issues raised by our article “Ectopic Pregnancy and Catholic Morality” (Spring 2011) and our subsequent response to his letter (Summer 2011). There seem to be several ongoing concerns, and it might be helpful to identify these and respond accordingly.

1. *The question of Fr. Rhonheimer’s fidelity to the magisterium.* In his most recent response, Fr. Rhonheimer objects to our alleged “insinuation” that he is being “unfaithful and disobedient to the magisterium of the Church” by criticizing the 1884 and 1889 decrees of the Holy Office concerning craniotomy. He ignores, however, that we have commended him for submitting his book to the CDF. We likewise stated “that it is up to the CDF, not us, to decide whether [his criticism of the 1884 and 1889 decrees] constitutes infidelity to magisterial teaching.” He is correct that the CDF’s request for him to publish his book suggests a possibility that the 1884 and 1889 decrees might be overruled. This possibility, however, applies to all authoritative but not irreformable teachings of the ordinary magisterium (see the CDF’s 1990 instruction, *Donum veritatis*, n. 24). Nevertheless, the “willingness to submit loyally to the teaching of the magisterium on matters *per se* not irreformable must be the rule” (*Donum veritatis*, 24). While it might be possible for the CDF to issue a qualification of the 1884 and 1889 decrees, we find this highly unlikely, since craniotomies have been rendered virtually obsolete by the development of caesarean sections.

2. *Fr. Rhonheimer’s rejection of the moral reasoning behind the 1884 and 1889 decrees of the Holy Office.* More important than the issue of authority is why Fr. Rhonheimer believes the 1884 and 1889 decrees were the consequence of confused moral reasoning. On page 78 of *Vital Conflicts*, he describes as “problematic” the addition made in 1889, which rejects “any surgical operation whatever that directly kills the fetus or the pregnant mother” (*et quaecumque chirurgicam operationem directe occisivam foetus vel matris gestantis*; Denz.-H. 3258). But the principle that one may never directly kill an

innocent human being is a definitive, infallible moral principle that is based on the natural law and Sacred Scripture and is “taught by the ordinary and universal Magisterium” (John Paul II, *Evangelium vitae*, n. 57). Why the affirmation of a moral principle based on the natural and revealed law is “problematical” is difficult for us to grasp, unless one accepts Fr. Rhonheimer’s belief that craniotomy does *not* involve the direct killing of an innocent human being.

3. *The lack of a choice of the baby’s death in craniotomy.* Fr. Rhonheimer claims that the “very case of vital conflict” posed by craniotomy “prevents the chosen act from being a morally evil act,” and “as a consequence the only remaining action-defining intentionality is saving the mother’s life” (original emphasis). Fr. Rhonheimer, though, does not seem to grasp that the same reasoning could be applied to the other possible life-saving action: namely, the killing of the mother to save the life of the baby. The craniotomy case of “vital conflict” pits the life of the child against the life of the mother, but the child could be saved from death if his or her mother were killed and the cervix expanded to allow safe delivery for the child. If the killing of the baby via craniotomy does not involve a violation of justice (because of the vital conflict), then neither would the killing of the mother to save the life of the child. We believe this is why the Holy Office in 1889 includes the rejection of any surgical operation that directly kills *either* the fetus *or* the gestating mother. Both lives are of equal value, but Fr. Rhonheimer’s reasoning assumes that it is the child who loses a right in justice to continue living, and not the mother.

4. *The knowability of the eternal law.* Fr. Rhonheimer’s discussion of the definition of sin and its relation to the knowability of the eternal law is very interesting. This probably deserves more study on our part. However, his claim that we do not know “the Eternal Law as it is in the mind of God” suggests that there is a dissonance between God’s law as communicated to us and God’s eternal law as it is in itself. But St. Thomas defines natural law as “the participation of the eternal law

in the rational creature” (*participatio legis aeternae in rationali creatura*; *Summa theologiae* I-II, q. 91. a. 2). “Participation in the eternal law” suggests a type of knowledge of the eternal law. Perhaps, though, this is a discussion for another occasion.

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Erratum

On page 509 of the Autumn issue of the *NCBQ* (vol. 11, no. 3), in the article “Abortion in a Case of Pulmonary Arterial Hypertension: A Test Case for Two Rival Theories of Human Action” by Rev. Nicanor Pier Giorgio Austriaco, OP, a sentence mistakenly refers to the baby in the Phoenix case as “an eleven-month-old fetus.” The baby’s gestational age was eleven weeks.

This correction has been made in the online copy of the article, available at <http://ncbcenter.metapress.com> or by calling (215) 877-2660.