

### Disabilities, Suffering, and Medical Aid in Dying

*To the Editor:* Stephen Mikochik's well-written essay "Broken to the Hope" highlights two issues dear to me: my country and discriminatory policies directly impacting people with disabilities. I am a Canadian citizen, a lawyer, and an ethicist conducting clinical ethics consultations in a large American hospital. Most importantly, I am the daughter of a woman with Parkinson's disease (PD).

In June 2016, the Medical Aid in Dying Act (MAID) came into effect in Canada, providing an option for individuals with "grievous and irremediable" medical conditions to seek assistance in their deaths. As Mikochik highlights, the definition of such a condition is "a serious and incurable illness, disease or disability ... in an advanced state of irreversible decline in capability ... [where] natural death has become reasonably foreseeable, taking into account all of [the] medical circumstances, without a prognosis necessarily having been made as to the *specific length of time ... remaining*."<sup>1</sup> Additionally, this grievous and irremediable condition must cause *suffering*. Notably, in September 2017, a woman with PD won a challenge to the law and was able to end her life through MAID. She had previously been denied MAID because of the lack of immediacy of her death.<sup>2</sup> Like my mother, she suffered leg pain and nausea due to her PD. Importantly, individuals with PD typically die from complications associated with the disease not the disease itself.

The effects of MAID and the resulting litigation are profound. It has opened a door for individuals who are suffering from medical

conditions to seek an avenue to end their lives. There are many ethical arguments in favor of and in opposition to assisted suicide and euthanasia, the vast majority of which focus on patient autonomy, with a specific emphasis on the alleviation of patient suffering. However, the recent Canadian legislation has (1) engaged in a partisan conversation regarding suffering and (2) targeted individuals with disabilities instead of helping them.

*Suffering.* MAID and similar legislation in the United States imply that suffering is bad and that the most effective mechanism to avoid suffering is death. Suffering, the avoidance of suffering, and the purpose of suffering not only have a long philosophical history but strong religious affiliations as well. Many of the theological reasons indicate that suffering builds endurance, resilience, patience, and compassion. Importantly, these virtues are aspired to in a secular society as well; moreover, they are a considerable aspect of virtue ethics taught in medicine. Yet when we are faced with the possibility of actual as opposed to theoretical suffering, death has become a "treatment" alternative. Those who engage in both academic and policy conversations regarding this type of legislation consistently and blatantly ignore this inconsistency and fail to comprehensively address actual treatment alternatives, such as palliative care. The time, money, and resources that have gone into the creation and implementation of such legislation would have been better spent attempting to further pain management and curative pursuits. Instead, the Canadian government has supported the greatest defeatist pursuit one could.

*Targeting Disabled Individuals.* I was nineteen years old when my mother began to show symptoms of PD, and in many ways her suffering has had a profound effect on the narrative of my life and my profession. Witnessing her triumphs and struggles has fostered endurance, resilience, patience, and compassion in me. These virtues have made me a better clinical ethicist, have grounded me in the human experience, and have made me significantly more attuned to the needs of disabled individuals. Legislation like MAID essentially implies that individuals living with chronic or terminal conditions are better off no longer existing—that disabled lives, ones that often have aspects of suffering, are not worthwhile. This is flagrantly incorrect. This legislation is simply another installment in a long history of discrimination against those suffering from disabilities. As Mikochik highlights, MAID directly contradicts the protections for disabled persons that Canada agreed to under the UN Convention on the Rights of Persons with Disabilities.

*Counterargument.* Those who discount my concerns with MAID claim that (1) permitting MAID fosters patient autonomy and (2) pursuing the positive aspects of suffering is inappropriate. In regard to the first concern, practicing ethics and passing laws simply on the basis of patient autonomy not only negates the aforementioned virtues but disregards a long history of ethical thought. Current bioethics relies too heavily on patient autonomy while simultaneously disregarding consequentialism, utilitarianism, deontology, and virtue ethics. Simply because a person wants to do something does not make it an ethical choice. In regard to the second concern, while I am deeply sympathetic toward and acutely aware of those suffering from pain, it is inappropriate not to consider these aspects. Suffering not only instills virtues in both the sufferer and the community; it also drives people to eliminate suffering. Death is the elimination of life, not the elimination of suffering.

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1. Stephen L. Mikochik, “Broken to the Hope: The Right to Life, the UN Convention on the Rights of Persons with Disabilities, and Canada’s Medical Assistance in Dying Act,” *National Catholic Bioethics Quarterly* 17.2 (Summer 2017): 229, emphasis added.

2. Canadian Press, “B.C. Woman Who Challenged Right-to-Die Laws Gets Medically Assisted Death,” *CBC News*, September 18, 2017, <http://www.cbc.ca/>.

## Embryo Adoption and the Incarnation

*To the Editor:* In response to my article “Navigating an Impasse in the Embryo Adoption Debate,”<sup>1</sup> Francis Etheredge attempts to convince the opponents of embryo adoption that to introduce an order to birth in a woman by means other than the marriage act can be justified simply on the basis of the means God employed in the Incarnation.<sup>2</sup> Unfortunately, among the arguments employed in the embryo adoption debate, this argument is the one least likely to convince its opponents, for a variety of reasons.

First, this mode of argumentation seems to pit faith against reason. Most of the opponents of embryo adoption argue for its immorality by appealing to naturally knowable moral truths, working under the supposition that God does not contradict what is naturally knowable by divine Revelation. To argue on the basis of Revelation that what we know to be wrong by natural reason is in fact right entails offering us a choice between reason and faith, which our faith itself does not permit us to make. Thus, before drawing a tropological meaning from the Gospel account of the Incarnation that would allow embryo adoption, our arguments that are based on natural law must be soundly defeated.

Second, there are several problems with the analogy between the Incarnation and embryo adoption. While it is true that moral theology employs propositions drawn from public revelation in order to demonstrate matters concerning the properly Christian

exercise of the virtues, it is unclear what moral is to be drawn from the application of Mary's *fiat* to the use of assisted reproductive technologies. The first way we can draw the analogy is something like this: as Mary could licitly consent to be acted on by God in order to attain to a miraculous pregnancy, so can a woman consent to be acted on by a technician in order to attain to a technologically miraculous pregnancy. If this analogy proves anything, it proves too much. Thus formulated, it could justify any form of artificial impregnation, whether by insemination with husband or donor sperm or by heterologous or homologous IVF followed by embryo transfer (IVF-ET). A second formulation of the analogy could read, as Mary could licitly consent to have her own ovum fertilized by God, so can any woman licitly consent to have her own ovum fertilized by a technician. On this formulation, we have a situation in which any form of artificial impregnation is morally licit under the condition that it employs the woman's own ovum. However, in this scenario, the heterologous embryo transfer involved in embryo adoption or rescue is not justifiable. Thus far, if the Incarnation proves anything about how a woman may licitly be impregnated by technical means, it either proves that all forms of artificial impregnation are licit, in which case embryo adoption is also licit, or it proves only that artificial impregnation is licit when it employs the woman's own ovum, in which case embryo adoption is illicit.

Etheredge would like to embrace the first horn of this dilemma while adding further conditions that would rule out artificial insemination and IVF-ET, leaving only embryo transfer immune from condemnation. He does this by repeating the often-argued proposition that the harm of those cases arises from being "part of a process which seeks, from its origin, to supplant the marriage act and the subsequent fertilization of the ovum."<sup>3</sup> This judgment thus serves as a limit to the tropological exegesis of the account of the Incarnation. By arguing in this manner, he implicitly shows that we do not so much draw a conclusion about the liceity of embryo

transfer from the account of the Incarnation as see in it an illustration of the way in which a woman can will to be artificially impregnated apart from intercourse. Nevertheless, as Etheredge acknowledges, disanalogous elements of this reading of Scripture remain. Mary submitted herself to be impregnated not by a human technician with an embryo biologically unrelated to her but by the Creator of all things, who miraculously made her fecund in accordance with his plan of salvation. Does the fact that it was God who worked this miracle in her make a difference when drawing the moral lesson from the scriptural account?

Etheredge suggests that it does not: "The possible objection that an act of God is beyond morality is incoherent. God is expressed in all that He is and does; therefore, the Incarnation does not contradict the moral order but is rather a unique expression of it—the openness to life expressed by Mary and Joseph expresses both spousal and parental love."<sup>4</sup> While I heartily endorse the view that God does not contradict the moral law He has created, I do not see how this view entails that whatever can be done by God without contradicting that law can also be done by us without contradicting that law. For example, God has, according to the testimony of Scripture, commanded the slaying of the innocent and the despoliation of the Egyptians. As I argue in my original paper, the moral object of an action is contingent in large part on whether the matter acted on is fit to bear the form introduced into it by the agent.<sup>5</sup> On a traditional Thomistic analysis of moral action, then, innocent human beings are not fit matter for an action of killing (thus such killing is murder), and what belongs to another is not fit matter for appropriation (thus such taking is theft). Did God then command murder and theft?

On the traditional Thomistic analysis, which stands in resolute opposition to the view that God could dispense his subjects from the precepts of the Decalogue,<sup>6</sup> He did not, for creatures stand in relation to each other in a way different from how they stand in relation to God. While God's dominion

over creatures is absolute, such that any human being under the ban of death is fit matter for killing and any created thing is fit matter for taking, man's dominion over creation is limited and relative, such that innocents are not fit for killing and things that belong to others are not fit for taking. As creatures ordered to a common good, we are bound to observe the means indicated by the law of nature in pursuit of that good. God, however, is not himself thus bound to the means of attaining the good that He intends but only to the order of things as they depend on him as first cause. Thus while it would be contrary to the divine essence to command acts contrary to the virtues, He can command acts that would be vicious if carried out under merely human authority.

Oponents of embryo adoption argue that the means of pursuing the common good of the species's continued existence indicated by the natural law is that we order ourselves to the birthing of offspring only by means of the marital act and rear that offspring within the stable union of matrimony. Thus while a woman is fit matter to be ordered to birth by her husband's generative act, she is not fit matter for the technician's act of ordering her to birth. The order of secondary causality from which we come to know the law of nature exists for the sake of the end that God intends in creating that order, in this case, the generation and education of offspring. In substituting a miraculous intervention in the place of some element of that secondary causality, God still honors the end for which He created that order and thus cannot be said to contradict it. While we are bound in our actions to cooperate with God's plan to sustain and increase the human family by the orderly use of our generative faculties within marriage, it is only God's prerogative to attain that end apart from that order of secondary causality. With respect to God, then, a woman is fit matter to be ordered to birth, for this is in accordance with her nature to be so ordered, whether by a miracle that renders her capable of engendering children by way of the

secondary causality of marital intercourse or by way of a miracle that is substituted for that secondary causality.

Consequently, the proper tropological significance of the Incarnation cannot be that we should, like God, seek to order women to birth by our God-like technical prowess or submit ourselves willingly to such unnatural depredations. Such a moral makes a mockery of the divine and human orders, proffering a simplistic argument that if God can do something, so can we. The Incarnation offers us a twofold lesson, which cannot be employed in support of embryo adoption. On the one hand, what the event offers us is an illustration of God's goodness in bringing about our redemption through his miraculous birth from a virgin, compelling us to recognize his supreme dominion over life and death. On the other hand, Mary's *fiat* offers us an example of the humble obedience with which we should cooperate in that plan. In this connection, the lesson of the Incarnation might permit one possible application of embryo transfer, namely, God could directly inspire some individual woman to undergo embryo transfer in order to further his designs for the continuation of the species. However, the possibility of such an essentially extraordinary and supernatural commission serves as no basis for a general rule permitting or counseling embryo adoption or rescue.

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1. Charles Robertson, "Navigating an Impasse in the Embryo Adoption Debate: A Response to Elizabeth Rex," *National Catholic Bioethics Quarterly* 16.3 (Autumn 2016): 409–417.
2. Francis Etheredge, letter, *National Catholic Bioethics Quarterly* 17.2 (Summer 2017): 196–198.
3. *Ibid.*, 197.
4. *Ibid.*, 196.
5. Charles Robertson, "A Thomistic Analysis of Embryo Adoption," *National Catholic Bioethics Quarterly* 14.4 (Winter 2014): 676–680.
6. Thomas Aquinas, *Summa theologiae* I-II .94.5, I-II.100.8.

## Impregnation versus Implantation in the Embryo Adoption Debate

*To the Editor:* I wish to express my gratitude to Charles Robertson for his insightful essay titled “Navigating an Impasse in the Embryo Adoption Debate: A Response to Elizabeth Rex.”<sup>1</sup> Unfortunately, in the first sentence of his abstract, Robertson makes a very significant mistake and refers to my Winter 2015 article as “The Magisterial Liceity of Embryo Adoption.” In fact, the title of my article is “The Magisterial Liceity of Embryo Transfer.”<sup>2</sup> My entire article was dedicated to correcting his previous article’s confusion regarding these two terms!

In his conclusion, however, Robertson rightly asks why embryo transfer should be considered licit in the case of rescue or adoption as “an ad hoc exception to a rule that is everywhere else admitted, namely, that it is illicit to *effect pregnancy* through technical intervention in lieu of coitus.”<sup>3</sup> Robertson’s phrase “effect pregnancy” is at the epicenter of both the problem with and the solution to the impasse in the embryo adoption debate. We must begin by defining “effect pregnancy.” It is now an irrefutable scientific fact that pregnancy is effected at fertilization, when a single human spermatozoon “impregnates” a single human oocyte and “generates” a new human being. Impregnation is synonymous with fertilization and conception, but it is not synonymous with implantation, because impregnation precedes and is distinct from implantation. Pregnancy begins with fertilization, which is the impregnation of an egg by a sperm. A new human being is conceived at fertilization, not implantation. Herein lies most of the confusion.

Implantation is effected when the human embryo implants itself in a woman’s uterus after impregnation—fertilization has taken place. Implantation initiates gestation. It is crucial to recognize and agree on the definitions of and the differences between impregnation and implantation as well as those between generation and gestation. Generative acts outside of marriage and the

marital act are illicit—for example, rape, incest, fornication, adultery, and IVF. But once a child has been conceived, the only moral option is life for that child, even if it has been illicitly conceived by its biological and genetic parents. Embryo transfer and adoption are not generative acts, and they must be held as licit acts in order to heal and save the life of an embryo.

If, scientifically speaking, pregnancy begins with impregnation, not implantation, then it logically follows that “to effect pregnancy” means “to effect fertilization,” not “to effect implantation,” since pregnancy is scientifically effected at fertilization. Moreover, embryo transfer does not even technically implant an embryo in the uterus. The process simply transfers the human embryo to the uterus, where the human embryo implants itself in the uterine wall. Embryo transfer does not effect pregnancy. It is a medical procedure, a technical intervention, that is used to transfer human embryos. According to *Donum vitae* and the *Catechism of the Catholic Church*, “one must hold as licit” any medical procedure that heals or saves the lives of human embryos.<sup>4</sup>

I urge Robertson, who is a Thomistic scholar and an alumnus of the Center for Thomistic Studies at the University of St. Thomas, to reconsider these critically important definitions. If Robertson agrees with and accepts these simple scientific and ontological distinctions, then we are 100 percent in agreement that it is always illicit to effect pregnancy—defined as impregnation, fertilization, and conception—through technical intervention in lieu of coitus. Embryo transfer and embryo adoption are not exceptions to this rule; they are corporal works of mercy that aid the least of our brethren, who are in desperate need of healing and a loving family to adopt them.

In a footnote to his article, Robertson candidly states, “Were I to be convinced of the liceity of embryo transfer, then, I would consider both adoption and rescue morally licit means to save the lives of these persons.”<sup>5</sup> This is at the heart of the impasse regarding embryo adoption. Until therapeutic embryo

transfer, which is a medical procedure that is used to heal and save the lives of human embryos, is recognized and accepted as magisterially licit, as clearly stated in *Donum vitae* and the Catechism, those who continue to deliberately confuse embryo transfer and embryo adoption with illicit assisted reproductive technologies will continue to advocate throwing the baby out with the bathwater.

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1. Charles Robertson, "Navigating an Impasse in the Embryo Adoption Debate: A Response to Elizabeth Rex," *National Catholic Bioethics Quarterly* 16.3 (Autumn 2016): 409–417.

2. Elizabeth Bothamley Rex, "The Magisterial Liceity of Embryo Transfer: A Response to Charles Robertson," *National Catholic Bioethics Quarterly* 15.4 (Winter 2015): 701–722.

3. Robertson, "Navigating an Impasse," 417, emphasis added.

4. *Catechism*, n. 2275; see also Congregation for the Doctrine of the Faith, *Donum vitae* (February 22, 1987), I.3.

5. Robertson, "Navigating an Impasse," 146 note 13.