

## Flaws in Flood's Argument

Fortunately for all of us, Patrick Flood's article in the Spring issue, "Is International Law on the Side of the Unborn Child?" addresses a timely question for the pro-life and pro-family movement.<sup>1</sup> He asks whether international law now protects the unborn child from abortion and he answers yes. He bases his argument on (1) the plain reading of various texts, and (2) what the original negotiators must have meant, and (3) subsequent actions of UN committees and state actors.

These three aspects of interpreting treaties have been used by both sides of the abortion debate in the contest to determine the meaning of international law. But a close look at these aspects leads to the conclusion that the pro-choice side has it wrong, and so does Flood. We hope that making public our respectful disagreement with Flood's conclusion will engage him and others in a collegial debate about this vital issue.

Flood begins with a précis of the Universal Declaration of Human Rights, which uses broadly inclusive words like "everyone" and "all" and phrases like "all members of the human family." Flood concludes that a plain reading of this language can only mean it includes unborn children. Loosely stated, he asks, "Who else could it mean?" (79). Well, quite frankly, it could mean everyone except unborn children. Flood cites the non-binding 1959 Declaration of the Rights of the Child and the binding 1989 Convention on the Rights of the Child, which define children as "every human being below the age of eighteen years" (78). Again, Flood says that everyone under the age of eighteen can *only* be defined as including the unborn child. Well, this state-

ment is not accurate when we consider the fact that a few countries that negotiated the 1959 document and many more that negotiated the 1989 document had legal abortion. He also quotes a section of the documents that says children are deserving of special, even legal, protection before and after birth (78). Flood says this is an explicit protection of the unborn from abortion. But unborn children in the United States are given special and even legal protection. The unborn child may be represented in court in both civil and criminal matters. Moreover, unborn children are guaranteed financial support by the U.S. government in some cases when they are in need of medical attention. When there are conflicting conditions, the unborn child is sometimes given a separate doctor than the mother. These are all special and even legal protections. Even so, the unwanted unborn child may be aborted for any reason and for no reason through all nine months of pregnancy and beyond.

Evidence that the drafters of this language *intended* to protect unborn children from abortion is necessary for Flood's thesis to be true. We find little evidence for this assertion. True, France issued a strong reservation to article six of the 1989 Children's Convention. France insisted that article six, which gives legal protection to unborn children, cannot have an effect on France's laws on the interruption of pregnancy. Some argue that this is proof France was resisting the obvious intention of the document to protect unborn children from abortion. Using this logic, however, the reservations taken by the Holy See, Guatemala, and Argentina (that the convention protects children from the moment of conception) might prove the opposite: that the legislative intent of the treaty does not protect unborn children. Moreover, if Flood's proposition is true, then what is to be said about the few dozen reservations

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<sup>1</sup> *National Catholic Bioethics Quarterly* 7.1 (Spring 2007): 73–95.

that pro-life countries have issued to UN documents stating that “reproductive health” does not include abortion? Using Flood’s logic, these reservations prove legislative intent to include abortion in the definition of reproductive health. Isn’t it more likely that France was just protecting itself from a misinterpretation of the document, much as pro-life countries do in insisting that reproductive health does not include abortion?

Flood makes much of various documentary condemnations of the execution of pregnant women. This occurs in the 1966 International Covenant on Civil and Political Rights, the two 1977 Protocols to the Geneva Conventions, the American Convention on Human Rights, the African Charter on the Rights and Welfare of the Child, and the Arab Charter on Human Rights. Flood says that this proves that the unborn child is protected in international law. Given that women on death row can get abortions, what it really proves is that women on death row who want to keep their children cannot be executed until the child is born. The key word is “want.”

Flood says his case is further proved by the actions of the UN human rights committees. The problem with this part of his argument is that he offers very little evidence that committee actions support his interpretation that unborn children are protected from abortion. He offers one example in a citation in which a committee complained about “discriminating laws on abortion affecting disabled children” (80). This hardly establishes an international right to life for the unborn child. Moreover, pro-life supporters have long complained about the improper interjection by these committees of their own biased agendas into the affairs of states parties. The committee that oversees the Convention on the Elimination of All Forms of Discrimination against Women has continually pressured states parties for years to legalize abortion, even though abortion is not even mentioned in the document. But what undoes Flood’s argument here is a quote by a committee emphasizing that laws on abortion are within the discretion of individual states. Flood has touched on the truth of the matter. There is no

international law giving the right to abortion, and there is no international law protecting the unborn from abortion.

As pro-life supporters at the international level, we should remain consistent in our approach. We have complained for years and will continue to complain about the way UN documents are misinterpreted by radical nongovernmental organizations and by UN committees to advance a right to abortion in international law. Those committees and NGOs do this by redefining language that was agreed to in negotiations by states parties. We should not do the same thing ourselves. Finally, if what Flood says is true, then why are we only now reading about it on these pages? It seems that we would have celebrated something this important a long time ago.

We look forward to and work for the day when radical social policy is not even entertained in international negotiations, and is roundly mocked at the United Nations. We look forward to and work for the day when international law explicitly protects the life of the unborn from abortion. We will get there by advancing international law properly understood and not by taking shortcuts, as tempting as they may be.

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### **ANT-OAR Misrepresents the Scientific Facts**

In the Autumn 2006 issue of this journal, Rev. Nicanor Austriaco argues that there are “scientific and philosophical” reasons why ANT-OAR is a “technically feasible and morally acceptable alternative” to the currently available, unethical method of obtaining embryonic stem cells, which involves the

destruction of human embryos.<sup>1</sup> To support his argument for the technical feasibility of ANT-OAR (the moral acceptability will not be discussed here, since it has already been extensively debated), Austriaco cites a number of scientific papers. But a careful reading of these papers, and others, reveals that what Austriaco contends to be true about ANT-OAR is actually not true. ANT-OAR proposes that the overexpression of the transcription factor Nanog in the newly cloned entity that is generated—and also in the somatic cell prior to nuclear transfer—will convert it directly into a pluripotent stem cell, bypassing the embryo stage altogether. This assumes that Nanog can single-handedly establish pluripotency in the one-celled ANT-OAR embryo. But the overwhelming evidence from the scientific literature is that Nanog *cannot do this*. Rather, it is only one part of a complex network of transcription factors that together act to maintain pluripotency in embryonic stem cells.

At this point, ANT-OAR proponents might counter that a *cocktail* of factors, including Nanog, might be necessary to effect the establishment of pluripotency, and that biologists should work to discover these factors. But if this is the case, if a cocktail is needed, then why go through the cloning step at all? Why not just try to reprogram an *adult* cell directly? Indeed, as recent work by Takahashi and Yamanaka shows, the reprogramming of an adult cell to pluripotency using a defined set of factors might be possible.<sup>2</sup>

Based on the scientific evidence, then, it is clear that the proponents of ANT-OAR are in error when they attribute almost unlimited power to Nanog as a pluripotency-inducing factor. Given this, it is ironic that some of these proponents, including Austriaco, have

mischaracterized non-scientists opposed to ANT-OAR as not understanding the “science” behind the proposal. At one point in his essay, Austriaco levels the charge that theologian Jose Granados “misunderstands the science of epigenetic reprogramming.” Yet, in explanation, Austriaco writes, “reprogramming the somatic cell nucleus to become an embryo is not the same as reprogramming the somatic cell nucleus to become a pluripotent stem cell.” At first glance, this sentence might seem reasonable, but on re-examination, the reader is left asking, How can a nucleus become a whole cell? Clearly, a part (a nucleus) cannot become a whole (a cell). Austriaco’s statement here appears to have no basis in biological reality.

Obviously, Austriaco did not intend to say that a nucleus literally *is* a cell. But what exactly did he mean? One can only guess, but it is possible that, due to an extreme reductionistic view, he believes that the only part of the cell that really matters is the nucleus, so much so that the nucleus *becomes* the cell. Supporting this contention is the fact that, at several places in his essay, he describes the enucleated egg that receives the somatic cell nucleus during the nuclear transfer step of ANT-OAR as a “cytoplasmic sac.” He characterizes the egg cytoplasm this way despite the fact that the cytoplasm, which is known to be structurally very complex and packed with spatiotemporal developmental information, plays a critical role in early development.<sup>3</sup>

In short, there are at least two problems with Austriaco’s defense of the scientific feasibility of ANT-OAR. First, it misrepresents the known scientific facts about Nanog. Second, in its extremely reductionistic view of the cell, it inaccurately portrays biological reality.

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<sup>1</sup> Nicanor Austriaco, O.P., “The Moral Case for ANT-Derived Pluripotent Stem Cell Lines,” *National Catholic Bioethics Quarterly* 6.3 (Autumn 2006): 517–537.

<sup>2</sup> K. Takahashi and S. Yamanaka, “Induction of Pluripotent Stem Cells from Mouse Embryonic and Adult Fibroblast Cultures by Defined Factors,” *Cell* 126.4 (August 25, 2006): 663–676.

<sup>3</sup> David G. Capco, ed., *Cytoskeletal Mechanisms during Animal Development* (San Diego, CA: Academic Press, 1996).

## The ANT Debate Continued

This letter is a response to Rev. Nicanor Austriaco's article "The Moral Case for ANT-Derived Pluripotent Stem Cell Lines" in the Autumn 2006 issue of the *Quarterly*.

The burden of proof rests with the proponents of ANT, who must show that it does not give rise to a disabled embryo and that the process is otherwise morally licit. There are several reasons why I believe Rev. Austriaco has failed to provide that proof.

Austriaco asserts that since the suppression of the *Cdx2* gene prevents the cell from being totipotent and able to form the trophectoderm, the ANT product cannot be considered an embryo, since it lacks both the organizational pattern he considers essential to an embryo, and the ability to implant in a uterus and develop into an adult human being. However, in the normal developing embryo, the cells that do not express *Cdx2* become the inner cell mass that eventually forms the body of the developing human. The *Cdx2*-expressing cells become the placenta, which does not become part of an adult human.

While removing *Cdx2* will prevent formation of the tissue that does not persist as part of the mature human, it is not clear whether the organization of the *Cdx2*-negative entity is too disrupted to be considered an organism. If I may appropriate one of Austriaco's animal analogies, his justification of the ANT process can be compared to saying that a caterpillar is not a living organism if we have disabled the gene needed to form the cocoon that allows it to become an adult butterfly.

Austriaco presumes that we can determine the ontology of the ANT product by its epigenetic state. He argues that since the epigenetic state will not be identical to that of a normal embryo, it should not be considered an embryo. However, the epigenetic state is not enough, since we must also consider the morphology and the teleology before declaring ourselves satisfied with ontology. After all, the epigenetic state of an embryo generated by SCNT (somatic cell nuclear transfer) will not be identical

to that of a naturally conceived one, but Austriaco would not deny that the clone is indeed an embryo. There will indeed have to be significant animal testing of ANT before it could be undertaken in humans, but I am not so sanguine about the outcome as is Austriaco.

The problem is that an ANT-made entity's epigenetic state results from multiple factors. First, there is the epigenetic state of the somatic cell from which the nucleus is derived. Second, there is the state of the enucleated egg. Finally, there are whatever modifications scientists have made to either of these entities.

Further, we ought to consider that the teleological purpose of the egg is to produce a new human life, and Catholic teaching tells us that this must be done through natural biological means within holy matrimony. The harvesting of human eggs is not wrong merely because it harms women, but because it has turned the material from which new human lives are made into a commodity, thereby violating human dignity.

Thus, a perversion of human reproduction is being proposed in ANT. The products of ANT, even if they are not disabled human organisms, will be intrinsically disordered human biological entities. Austriaco's comparison to teratomas is telling, for teratomas are clearly disordered entities. Isn't using human eggs to create deformed beings instead of babies impious?

The objection here is of a different nature than the one I raised first (that ANT products may be disabled embryos, and if they are, killing them would be homicide). Rather, it is similar to why we would oppose cannibalism, even if the body to be consumed had died naturally. Just as we do not eat dead people, even though they might provide nutrition, we do not create deformed entities using human eggs, even though the eggs will die on their own and the beings will not survive.

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