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MORAL ASSESSMENT OF FROZEN HUMAN EMBRYO ADOPTION IN THE LIGHT OF THE MAGISTERIUM OF THE CATHOLIC CHURCH

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Abstract: As the number of frozen human embryos continues to rise daily, with numbers not expected to fall, an answer must be found to this dilemma. Four possible solutions have been suggested: a) thaw the embryos and allow them to perish; b) thaw them and donate them for biomedical research; c) thaw them and donate them in adoption; and d) leave them frozen indefinitely. This paper will evaluate the morality of these four possible solutions, particularly frozen human embryo adoption in the light of the Magisterium of the Catholic Church, which in its Instruction *Dignitas Personae*, appears to have opted to consider this practice as illicit. We also review the various stances of expert moralists in favour of or against frozen human embryo adoption, and we reflect on the extent to which the doctrine contained in *Dignitas Personae* can bind the moral conscience of the Catholic faithful. Finally, we make a personal evaluation of frozen human embryo adoption, in an attempt to find moral reasons that substantiate the negative opinion manifested by the Catholic Magisterium on this matter.

Key words: frozen human embryos, solutions to the frozen state, frozen human embryo adoption, moral assessment, Magisterium of the Catholic Church

Evaluación moral de la adopción de embriones humanos congelados a la luz del Magisterio de la Iglesia Católica

Resumen: Cada día aumenta el número de embriones humanos congelados y no se prevé que su número disminuya, por lo que parece necesario buscar una solución a este problema. Se han planteado cuatro posibles: a) descongelarlos y dejarlos morir; b) descongelarlos y donarlos para investigaciones biomédicas; c) descongelarlos y donarlos en adopción; y d) dejarlos congelados indefinidamente. En este trabajo se evalúa la moralidad de estas cuatro posibles soluciones, y especialmente de la adopción de los embriones humanos congelados, a la luz del Magisterio de la Iglesia Católica, que en su Instrucción *Dignitas Personae* se pronuncia por la ilicitud de dicha práctica. También se revisan distintas posturas de moralistas expertos favorables o no a la adopción de embriones humanos congelados. Igualmente se reflexiona sobre en qué medida la doctrina contenida en *Dignitas Personae* puede obligar a la conciencia moral de los fieles católicos. Finalmente se realiza una evaluación personal de la adopción de embriones humanos congelados tratando de buscar razones morales que fundamenten el por qué del juicio negativo manifestado por el Magisterio Católico.

Palabras clave: embriones humanos congelados, soluciones al estado de congelación, adopción de embriones humanos congelados, valoración moral, Magisterio de la Iglesia Católica

Avaliação moral de adoção de embriões humanos congelados, em consideração ao Magistério da Igreja Católica

Resumo: Cada dia aumenta o número de embriões humanos congelados e não se espera o número diminua, portanto parece necessário encontrar uma solução para este problema. Foram levantadas quatro possíveis: a) descongelá-los e deixá-los morrer; (b) descongelá-los e doá-los para pesquisa biomédica; (c) descongelada-los e doá-los para adoção; e (d) deixá-los congelados indefinidamente. Nesse trabalho se avalia a moralidade dessas quatro possíveis soluções e especialmente a adoção de embriões humanos congelados à luz do Magistério da Igreja Católica, que em sua instrução Dignitas Personae, opta pela ilegalidade da prática. Também se revisam posturas diferentes dos moralistas especialistas favoráveis ou não à adoção de embriões humanos congelados. Igualmente, reflete-se sobre como a doutrina contida na Dignitas Personae pode obrigar a consciência moral dos fiéis católicos.Finalmente se realiza uma avaliação pessoal da adoção de embriões humanos congelados pretendendo buscar razões morais que fundamentem o porquê do juízo negativo manifestado pelo magistério católico.

Palavras-chave: embriões humanos congelados, soluções para o estado de congelamento, adoção de embriões humanos congelados, valoração moral, Magistério da Igreja Católica

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Introduction

The number of frozen embryos is increasing daily, and although there are no reliable worldwide statistics, the figure is likely to exceed one and a half million; there were around 400,000 in the United States in 2003*(1)*, while it is thought that in Spain, the number could exceed 200,000*(2)*. These figures are not expected to fall, since to in order to make in-vitro fertilisation (IVF) more effective, and to reduce the risk of women having to undergo repeated hormonal stimulation, more embryos are produced than are transferred, so naturally, surplus embryos are frozen.

The situation of frozen embryos, unjust and irreparable, is unworthy of a human being, so a solution must be found for them. Four have been suggested: a) they can be transferred to a woman, the biological mother or another; b) they can be used for biomedical research; c) they can be left frozen indefinitely and d) they can be thawed and subsequently allowed to perish*(3)*.

Of these solutions, the first seems to be ethically best, as adoption by a woman other than the biological mother is the solution that offers most options for releasing the frozen human embryos from their irremediable and negative situation. This option has become known as frozen human embryo adoption (hereinafter simply "embryo adoption").

We have already referred to this previously in two articles in which we analysed the technical aspects of human embryo freezing*(4)*, and various ethical aspects of this practice*(5)*. In the latter, we referred to the ethics of embryo adoption from the perspective of philosophical ethics, moral philosophy and two monotheistic religions: Islam and Judaism. In this article we will refer to the moral evaluation that embryo adoption merits in the light of the Magisterium of the Catholic Church.

Magisterium of the Catholic Church on frozen embryo adoption

There are two documents in the Magisterium of the Catholic Church that more or less address the issue of embryo adoption: the Instruction *Donum Vitae*, published by the Congregation for the Doctrine of the Faith in 1978*(6)*, and *Dignitas Personae*, published on 8 September 2008, by the same Congregation*(7)*; the latter was signed by Cardinal Levada, then Prefect of the aforementioned Congregation, and ratified by his Holiness Pope Benedict XVI.

Certainly the Instruction *Donum Vitae* does not directly address the topic of frozen human embryo adoption, but it does state that "those embryos (produced by IVF) that are not transferred into the body of the mother and are called spare are exposed to an absurd fate, with no possibility of their being offered means of survival which can be licitly pursued"*(6)*. The Congregation for the Doctrine of the Faith may not have been specifically referring to embryo adoption, but it appears that by stating "with no possibility of their being offered means of survival which can be licitly pursued", it wants to underline that voluntary "rescue" (of frozen embryos) is not a licit option. However, what can be assumed from the aforementioned text, I believe without fear of contradiction, is that the moral assessment of embryo adoption cannot be considered closed with the teachings in *Donum Vitae*, and that consequently the topic remains open to further discussion.

The Instruction *Dignitas Personae* was later published, the last document of the Magisterium of the Catholic Church in which the topic of embryo adoption is explicitly addressed*(7)*. Point 18 of the Instruction states: "The majority of embryos that are not used remain "orphans". Their parents do not ask for them and at times all trace of the parents is lost. This is why there are thousands upon thousands of frozen embryos in almost all countries where *in-vitro* fertilization takes place". Continuing, in point 19: "With regard to the large number of *frozen embryos already in existence* the question becomes: what to do with them? Some of those who pose this question do not grasp its ethical nature, motivated as they are by laws in some countries that require cryopreservation centers to empty their storage tanks periodically. Others, however, are aware that a grave injustice has been perpetrated and wonder how best to respond to the duty of resolving it.

Proposals to *use these embryos for research* or *for the treatment of disease* are obviously unacceptable be-

cause they treat the embryos as mere "biological material" and result in their destruction. The proposal to thaw such embryos without reactivating them and use them for research, as if they were normal cadavers, is also unacceptable. It should be noted that, in this text of *Dignitas Personae*, no allusion is made to a fourth possibility, which is to leave them frozen indefinitely, included in most texts that make reference to the possible solutions that may be given to frozen human embryos*(4)*.

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.

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.

All things considered, it needs to be recognized that the thousands of abandoned embryos represent a *situation of injustice which in fact cannot be resolved.* Therefore John Paul II made an "appeal to the conscience of the world's scientific authorities and in particular to doctors, that the production of human embryos be halted, taking into account that there seems to be no morally licit solution regarding the human destiny of the thousands and thousands of 'frozen' embryos which are and remain the subjects of essential rights and should therefore be protected by law as human persons".

That is to say, this Instruction of the Magisterium of the Catholic Church seems to clearly specify the three possibilities for resolving the problem of the aforementioned frozen embryos.

The first two, being used for research or therapeutic uses, are morally illicit for the reasons stated in the text, as is the third. Two solutions would therefore remain: use them as a "*treatment for infertility*", or "*prenatal adoption*".

According to *Dignitas Personae(7)*, using them as "*treatment for infertility*" is considered morally illicit for the same reasons that make assisted reproduction illicit, so it can be inferred that the ecclesiastical Magisterium is not in favour of this practice either.

As regards "*prenatal adoption*", *Dignitas Personae* does not assess this as ethically positive either, because it presents ethical "problems not dissimilar to those mentioned above". However, we will return to these considerations later, given that it is the main aim of this paper.

Magisterial scope of Dignitas Personae

Before beginning this reflection, we believe it is important to consider to what extent this Instruction binds the moral conscience of the Catholic faithful, since this will determine whether we must morally comply with the teachings contained within it, which in turn will depend on the magisterial scope attributed to *Dignitas Personae*.

In this regard, first of all it can be said, according to Ladaria Ferrer*(8)*, that *Dignitas Personae* is an "Instruction of a doctrinal nature", issued by the Congregation for the Doctrine of the Faith and expressly approved by the Sovereign Pontiff, according to the following clause included at the end of the document: "The Sovereign Pontiff Benedict XVI, in the Audience granted to the undersigned Cardinal Prefect on 20 June 2008, approved the present Instruction, adopted in the Ordinary Session of this Congregation, and ordered its publication".

This papal approval implies the ratification of the decision, i.e. taking it as valid and making it binding, so it must be accepted at least as regards its legal effects*(9)*.

Therefore, *Dignitas Personae* belongs to those documents which are "ordinary Magisterium of the successor of Peter", in accordance with that specified in the Instruction *Donum Veritatis(10)*. This opinion is corroborated by the Spanish Episcopal Conference*(11)*, which states that *Dignitas Personae* is "an Instruction of a doctrinal nature",

issued by the Congregation for the Doctrine of the Faith and expressly approved by the Holy Father Benedict XVI, so it belongs to the documents that form part of "the ordinary Magisterium of the Sovereign Pontiff"*(10)*. Therefore, this Instruction should be accepted by the faithful with "religious assent" of their spirit*(11)*.

What, however, does "religious assent" to the Magisterium mean? In the opinion of Pérez de Heredia*(12)*, and according to Canon 752 of the Code of Canon Law*(13, canon 752)*, "when it comes to doctrinal documents of the Pontifical Commissions, approved by the Pope, which make reference to theological arguments, the attitude of believers to these teachings cannot be obedience of divine and Catholic faith, nor firm and definitive assent, owing to the teachings of the Ordinary or Extraordinary Universal Magisterium*(13, canon 250)*; however, Catholics certainly have a duty to acknowledge the intellect and truth to those proposals, assent which is not only an external attitude, with formal obedience, without opposition or indifference, but which requires an attitude of inward obedience of the will. This attitude is called "religious assent and obedience", because it is based on the faith of the Church. Therefore, the statements made in the Instruction *Dignitas Personae* should be accepted by the Catholic faithful.

However, it should be added that "religious assent" does not prevent the faithful from promoting research initiatives regarding this Magisterium, nor does it ban the intellectual work itself*(13, canon 218)*, since as Ratzinger*(14)* sustains, "in the course of her history, certain truths have been defined as having been acquired though the Holy Spirit's assistance and are therefore perceptible stages in the realization of the original promise. Other truths, however, have to be understood still more deeply before full possession can be attained of what God, in his mystery of love, wished to reveal to men for their salvation".

That is, it seems that we must give a nod of "religious assent" to the statements made in *Dignitas Personae* with respect to embryo adoption, but without this entailing (in our opinion) a ban on any believer or institution studying the matter in depth, to better understand, to the extent possible, what God has decided to reveal to men for their salvation.

Opinions in favour of embryo adoption

Many documents have been published by various authors in the period between 1987 and 2008 related with the moral licitness of embryo adoption that cannot be referred to herein, although most have been included in the book "Human Embryo Adoption", by Berg and Furton*(15)*, edited 30 June, 2006.

Nonetheless, we think it more interesting to look at what some authors, in our opinion of right conscience, say about embryo adoption following the publication of *Dignitas Personae*. As we have mentioned, this is the last document of the Catholic Church in which the moral classification that this action merits is specified, because as we have already discussed, the statements in this document should be accepted by the Catholic faithful with "religious assent".

In this regard, López Barahona, Lucas and Antuñano believe that the causes that contribute to the existence of frozen embryos, namely IVF, not transferring all the embryos generated to the uterus and freezing of surplus embryos, are ethically negative. However, thawing the embryo, an act which is different to the previous, can be positive or negative, depending not only on the object of the act, but also on the circumstances and the end for which the subject acts. Accordingly, if the act of thawing is aimed at restoring the embryo to its normal biological status and transferring it to the womb of a woman, it is morally licit in that the intentionality of the subject is to save the life of that frozen embryo. In contrast, it will be a negative act in itself, if done to manipulate or get rid of the embryo, or if after thawing it is not offered the possibility of a womb, because in this case the thawing process would be the direct and formal cause of its death.

These authors therefore believe that what determines the morality is the intentionality of the act, which should primarily be the good of the embryo, i.e. that the child born is wanted for himself, not for what he brings to the parents or for their own interest. This, in their opinion, would legiti-

mise embryo adoption, as the intentionality of the act would fundamentally be to save a human life, although a side effect, also positive, would be to have a child. For these reasons, they consider that embryo adoption, while not a universal solution to the problem, is nevertheless the only viable way of offering and allowing these embryos the possibility of development in accordance with their human dignity, and an attempt to repair, as far as possible, the very serious damage and terrible injustice that has already been inflicted upon them.

Another extensive reflection on the morality of embryo adoption was made by Javier Siegrist, in his final project for his Masters in Bioethics*(16)*. After examining the solutions proposed in *Dignitas Personae*, Siegrist was surprised that this Instruction proposed to keep the embryos frozen indefinitely.

He then evaluated the four possible options. The first is to thaw them without transferring them to the womb of a woman, so death of the embryo is inevitable. Siegrist says that this option is not ethically acceptable, since its object is in itself evil. The second is thawing them to be used in biomedical research, which is not acceptable either, because although the end is good, the method is not, because it entails death of the embryo. The third, keeping them frozen indefinitely (which is not included in *Dignitas Personae*) until they die naturally, is apparently compatible with the life of the embryo, but Siegrist asks if it is ethical to leave embryos in a situation of irremediable indignity and negligible quality of life, which he believes is not consistent with their human dignity, although this does not preclude this option from being morally acceptable.

Lastly is prenatal adoption, which, in his opinion, is presented as the proposal which, as it satisfies the right of the embryo to physical life, seems best suited to the dignified treatment that these human beings left in this situation of extreme vulnerability merit. This proposal approaches what has come to be known as embryo "rescue".

Of the four proposals, Siegrist believes that only two are compatible with the right to life of the embryo: keeping them frozen indefinitely, or giving them in adoption.

Pascual also considers that embryo adoption can be a licit alternative for those who want but cannot have children, but "only on condition that the adoption process is conducted in the same way as in the adoption of children without parents"*(17)*.

Similarly, Gonzalo Miranda believes that embryo adoption is licit, since it must be considered that these embryos are in a state of abandonment and faced with an obvious tragic alternative, so either someone adopts them or they will inevitably die. Thus, he maintains that in this case the same ethical and legal criteria should be applied as those used to resolve the situation of abandoned children already born, since the only possible good for the embryo is for someone to accept it, offering it a home and love.

Miranda also states that some people think that embryo adoption would be a type of surrogacy or surrogate motherhood, when in reality they are acts with very different objects and meanings. For him, surrogate motherhood consists of gestating an embryo, substituting the woman who wants to be the mother of the child. In embryo adoption, however, the practice involves a woman who wishes to save the life of a human being in the only way possible, while committing to adopting the child born as her own child.

Miranda concludes by stating that in the case of a frozen human embryo, we have a situation in which someone has already committed this moral evil, leaving as a result a human embryo destined to die. The evil has already been done by others, and now what the adoptive mother intends is to prevent another evil, the death of the embryo. Frozen embryo adoption is therefore not a collaboration with the evil done by others, but a gesture of solidarity and love towards the creature that has been abandoned before birth.

Other authors hold similar opinions*(18,19)*; even the United States Conference of Catholic Bishops*(20,21)* stated that "although *Dignitas Personae* has not clearly expressed itself on the subject, it has not formally issued a definitive judgment contrary to this practice", so it is a topic that morally remains open.

Finally, we would like to refer to the opinion of

Enrico Massini, coordinator of the John XXIII Community, an entity dedicated to embryo adoption with the specific aim of rescuing them from their undignified condition. Since many of the married couples in this Community already have several children, the aim of the adoption is not to have a child for fertility reasons, but to save their life.

As could not be otherwise, Massini is in favour of embryo adoption. He directed his doctoral thesis*(22)* to substantiating this defence, moreover, the only dissertation which, to our knowledge, is dedicated specifically to the subject discussed.

To begin with, Massini states that the Catholic Church has still not taken a definitive stance on the morality of embryo adoption, because it is still "under discussion within the Church". Although we do not share this assertion, as we will specify later, we believe it fitting that he voices it, because undoubtedly what has not been pronounced is an indispensible requirement to maintain a favourable assessment of the moral licitness of embryo adoption. Massini starts by determining what he considers the moral objective of embryo adoption, which in his opinion is "the thawing and transfer to the womb of the woman who accepts the cryopreserved embryo"*(23)*. Consequently, this specific objective is the one that must be evaluated to support, or not, the moral licitness of thawing human embryos. This moral classification is determined to a large extent by the meaning attributed to the term "surrogacy", because it is upon this that *Dignitas Personae* places the moral illicitness of embryo adoption.

Therefore, he analyses the meaning of the concept of surrogate motherhood, which can be understood as: "a) the woman who carries in pregnancy an embryo implanted in her uterus and who is genetically a stranger to the embryo because it has been obtained through the union of the gametes of "donors". She carries the pregnancy with a pledge to surrender the baby once it is born to the party who commissioned or made the agreement for the pregnancy; b) the woman who carries in pregnancy an embryo to whose procreation she has contributed the donation of her own ovum, fertilized through insemination with the sperm of a man other than her husband. She carries the pregnancy with a pledge to surrender the child once it is born to the party who commissioned or made the agreement for the pregnancy*(22)*.

However, in our opinion, surrogate motherhood, considered as defined here, cannot be applied to the surrogacy specified in *Dignitas Personae*, since in this document the child born is adopted by the mother who carries the pregnancy, and on no occasion does she gestate it to then donate it. This is what essentially defines surrogacy, understood as Massini interprets it, a donation that can be altruistic, as is the case of a woman who gestates it for love or friendship of the woman who cannot have children for fertility reasons or who does so for financial reasons, which is the surrogacy which in its pure form can be called "wombs for rent".

As a result, Massini understands that the moral classification of embryo adoption cannot be considered under the guise of surrogacy*(22)*, because in embryo adoption, this is "radically different as regards its end", which is unquestionably good, since it is aimed at providing a woman with the child she desires and cannot achieve naturally, never donating it to another woman after the birth. We are not going to go into depth here on the extent to which the intentionality of an action can determine its moral licitness, something that we shall address more thoroughly later, but it is evident that this interpretation of surrogacy is what positively determines (in Massini's opinion) the moral licitness of embryo adoption.

Opinions against embryo adoption

Nevertheless, just as there is are a number of moralists and theologians, undoubtedly of right conscience, who are in favour of embryo adoption, there are others, who in accordance with *Dignitas Personae*, do not accept it. In this respect, one of the most persuasive arguments against embryo adoption, in our opinion, is that held by Nicholas Tonti-Filippini*(18)*, who argues that producing and accepting a pregnancy with a previously generated embryo violates the sanctity of the marital relationship, because it violates the unitive purpose of marriage. From this stems the premise that a woman should only become pregnant as the result of the conjugal relationship with her husband, so becoming pregnant with an embryo generated

by any other procedure apart from this relationship seems intrinsically immoral to him.

The Asociación Aggiornamienti Sociali Study Group on Bioethics, referring to the adoption of frozen embryos, also wonder if it is morally licit. According to a document authored by the group*(23)*, *Dignitas Personae* makes it clear that the fate of frozen embryos is beyond repair, because in practice the adoption has objective elements of moral illicitness. The document does not refer to the intention, which in itself is praiseworthy, nor to the object (prenatal adoption in itself), which provides a chance of life for some frozen human beings, otherwise condemned to destruction; the authors consider that the moral illicitness is due to the circumstances, which for them would have insurmountable negativity*(24)*.

Similarly, for Brian Scarnecchia*(25)*, prenatal adoption of frozen embryos sets two moral absolutes against each other: the right to life versus the sanctity (sacredness) of marriage. To that end, he asks if it is morally licit for a woman to become pregnant by heterologous (i.e. not genetically related) embryo transfer, concluding that it is not, since this would make her a surrogate mother, which in his opinion is not morally licit.

This illicitness also extends to those who use prenatal adoption, not to have a child due to infertility issues, but to save the life of a frozen embryo, i.e. the altruistic rescue of frozen embryos genetically different to the gestational mother. He believes that this would be morally similar to heterologous embryo transfer, and therefore also morally illicit.

Tad Pacholzyk*(20)*, of the National Catholic Bioethics Center is also against embryo adoption, because he considers that it would violate the inherent rights of spouses to marital unity, specifically the right of the husband to his wife's body; he also adds that methods that violate the nature of marriage cannot be used, specifically their exclusive use within the marital relationship.

Cardinal Antonelli*(26)*, currently prefect of the Pontifical Council for the Family, states that in the teachings of *Dignitas Personae*, the Congregation for the Doctrine of the Faith, whose responsibility is to promote and safeguard the faith and moral standards, makes it clear that prenatal adoption, even when done solely with the good intention of respecting and saving the life of a frozen embryo, presents problems similar to those of artificial heterologous procreation. We consider it noteworthy that the Cardinal does not join this negative assessment of prenatal adoption to save lives to the medical, psychological or legal problems that can accompany it, but to the surrogacy that this practice entails.

As regards the extent to which the statements in *Dignitas Personae* should be accepted by Catholics, Antonelli sustains that, while it is thought that that the teaching in this Instruction is not the definitive opinion of the Magisterium on the subject, Catholics should not recommend prenatal adoption, because in conscience they should follow teaching that reflects the thinking of the Church at this time, which is that stated in *Dignitas Personae*.

Collard*(27)*, holds that embryo adoption presents moral difficulties due to problems related with ontology and kinship, besides raising further doubts about filiation than any other reproductive technique.

María Luisa Di Pietro*(28)*, explicitly rejects prenatal adoption, because she considers it the last act of an intrinsically immoral procedure. As such, she believes that it cannot be accepted in the light of any intentionality or circumstance, even if the couple adopting were not necessarily complicit in the technical procedures that precede the transfer of the embryos to the woman's uterus, and also because this adoption can be likened to a form of surrogacy or heterologous fertilisation, both ethically illicit.

Our opinion on the morality of embryo adoption

Sources of morality

In order to be able to support an opinion on the moral assessment of embryo adoption, we must refer, albeit succinctly, to the so-called sources of morality, which are essentially three: the *object*; the *end* or *intention*; and the *circumstances*, although they may also consider the *means*.

The *object of the human act* is that which the action by its own nature tends to, regardless of the circumstances that may accompany it*(29)*. The object is thus the specific action carried out. If we examine this in a little more depth, we can say that the object of a human action (understanding by "human action" an act that arises from the will guided by reason) is the content that specifies that action as a certain type of action. So-called "moral objects" are the objects of the rationally-guided will's choices to do something. Therefore, the objects of human actions are not simply naturally-given goals of habits or inclinations, nor "things" in relation to which we do something, for which we aim or which appear in our actions; rather, the objects of the action are, as Thomas of Aquinas says, formal principles of action as are capable by reason*(30)*.

Having defined what is called the object of human acts, we must determine to what extent the morality of those acts is specified fundamentally by the object thereof. In fact, "the morality of the human act depends primarily and fundamentally on the "object" rationally chosen by the deliberate will*(31)*, since "the object chosen morally specifies the act of the will, insofar as reason recognizes and judges it to be or not to be in conformity with the true good"*(32)*. The morality of the human act is therefore determined by its moral object, which is its goal in terms of the moral concerned.

As regards the *end*, this refers to the intentionality or purpose intended by the acting subject*(29,33)*. The Catechism of the Catholic Church defines it in these terms: "The intention is a movement of the will toward the end: it is concerned with the goal of the activity. It aims at the good anticipated from the action undertaken"*(32, n. 1752)*.

We must also consider the *means* used to obtain the desired end. In this respect, it must be stated that the means also condition the moral assessment of human acts. Therefore, a good end can become morally illicit when evil means are used. Likewise, the end can make an indifferent action good or evil, or can also make an act that is good or evil itself better or worse, but can never make an evil action good. The end never justifies the means*(34)*.

In terms of the *circumstances*, these are understood to be those accidental conditions that modify the already existing moral substance of the human act. There are two classes of circumstances: those that change the moral species of human acts, and those that exacerbate or diminish them. The circumstances play an important role in the moral judgement of an action, contributing to increasing or diminishing its moral goodness or malice, and can also mitigate or increase the agent's responsibility*(33:106)*, although the circumstances of themselves cannot change the moral quality of the acts. They cannot make either good or right an action that is in itself evil*(32, n. 1751)*.

We must also consider the *means* used to obtain the desired end. In this respect, it must be stated that the means also qualify the moral judgement of human acts. Therefore, a good end can be made morally illicit when illicit means are used to obtain it.

Our opinion

In embryo adoption, in our opinion, the moral object of the action is to thaw a frozen human embryo and transfer it to the womb of a woman other than its biological mother. This action, in terms of its object, could be qualified in principle as morally illicit, since it intentionally subjects the embryo to a disproportionate risk of death, which is induced by the act of thawing itself. In contrast, when the embryo is left frozen it can die; however, this death is not personally induced, but is the natural consequence of the frozen embryo's situation of irreparable indignity. In the first case, an action is performed that might directly cause the death of a human embryo, while in the second, a situation that can lead to death is not intentionally changed, but neither is it directly provoked, both circumstances with very different moral classification.

However, some authors maintain that the act of thawing in itself is positive, as is offers the embryo the possibility of returning to its normal biological state, resolving the situation of undignified abandonment in which it finds itself.

In our opinion, however, this is not the main ethical difficulty of thawing frozen embryos, and may

not even be an objective difficulty; we believe that the main moral difficulty lies in the surrogacy that the adoption involves.

To substantiate this assertion, we need to return to point 19 of *Dignitas Personae*. This indicates two reasons that support the moral illicitness of embryo adoption. The first is that the adoption "is not ethically acceptable for the same reasons which make artificial heterologous procreation illicit", and the second that its illicitness is based on the same reasons as "any form of surrogate motherhood".

We shall address the first question. From our point of view, the moral illicitness of embryo adoption cannot be compared to the moral illicitness of assisted procreation, since in assisted reproduction the moral illicitness depends, as specified very clearly in the Instruction, on the anthropological, medical and theological difficulties of the "production" of a child, i.e. the means used to create it. There is no doubt that the means used to create it is not morally acceptable, as a human being should be procreated within the gift of love that is given in the conjugal act, when this takes place within marriage. As such, any technique used to produce a human being outside that marital relationship must be morally rejected.

In the light of this criterion, all artificial fertilisation techniques, both heterologous and homologous, that replace the marital act must be excluded as morally illicit; only those techniques that are established as an aid to the conjugal act and its fertility are morally acceptable*(35)*.

That is, the illicitness of assisted creation is primarily linked to the improper means of producing the child, but it does not affect the dignity of that child once created, dignity that is inseparable from its own nature of human person and child of God.

Therefore, we believe that the reasons used to support the moral illicitness of assisted procreation cannot be employed to support embryo adoption, since in this case the embryo is already produced. Therefore, the potential moral illicitness of its manipulation cannot be linked to its production, but to the solution given to the situation of irreparable damage in which that frozen embryo finds itself, a situation that, as indicated in the Instruction, is incompatible with its dignity as a human person.

With respect to the second question, that which bases the moral illicitness of embryo adoption on the surrogacy that occurs in it, we think it necessary to clearly define the meaning of this term; a "surrogate" in essence can be defined as "a person or thing that takes the place or performs the duties of someone or something else"*(36)*. Hence, we are of the opinion that the use of the term surrogacy used in *Dignitas Personae*, should be framed in this context, that of replacing the biological mother with another woman for the gestation.

But why can surrogacy be described as morally illicit? In order to try to clarify this, we shall refer to point A-3 of *Donum Vitae(6)*, in which it states that "Surrogate motherhood represents an objective failure to meet the obligations of maternal love, of conjugal fidelity and of responsible motherhood; it offends the dignity and the right of the child to be conceived, carried in the womb, brought into the world and brought up by his own parents".

Why, though, does the immorality of surrogacy make embryo adoption morally illicit? In order to examine this in more depth, we need to extend the framework that determines the immorality of assisted procreation which, as we know, focuses primarily on the rupture of the inseparable unity of the conjugal act, fertilisation of the ovum and consequent generation of the embryo; i.e. on the rupture of a biological act that has an unquestionable moral repercussion.

However, when assessing the moral licitness or illicitness of embryo adoption, we are of the opinion that we cannot refer to a unitary act, but to a biological process, consisting of: the conjugal act, fertilisation of an ovum, generation of an embryo and subsequent implantation of the embryo in the mother's womb. Consequently, any interruption, rupture or modification of that procreative process that affects its bio-ontological unity could make it morally illicit. And this is where, in our opinion, we must consider the role that surrogacy has in the moral assessment of embryo adoption, because if one constituent of the aforementioned reproductive process (in this case surrogacy) is morally il-

licit, it makes the entire process illicit.

Our belief that the moral foundation of embryo adoption is based on the fracture of the procreative process coincides with that expressed by Roberto Colombo*(37)*, when he stated that "come potrebbe una 'destinazione' degli embrioni "abbandonati" contemplare una soluzione che si coloca nel segno di questas tessa rottura traumatica dell'unità e integritàtra la genitorialità, il concepimento e la gestazione che è all'origine dell' indignitor acondizione in cui essi versano?". In other words, Colombo uses our same argument, that the rupture of the unity of the procreative process, as we have called it, is the basis and foundation of the non-moral licitness of embryo adoption. As Colombo states in the aforementioned article, "la risposta all'ingiustizia non è mai un' altra ingiustizia".

An additional but important aspect in relation to the matter concerned, is that all the arguments put forward to support the moral illicitness of embryo adoption are based on the Spanish text of *Dignitas Personae(7)*. Some have argued however, that the Spanish text used may not be a reliable translation of the original Latin text, and that consequently our reasoning could be flawed, having used an erroneous base to develop it. Therefore, we consulted the Latin text of the Instruction, which reads thus in point 19, paragraphs 3 and 4:

3. Propositum quoque eos suppeditandi coniugibus infertilitate laborantibus, tamquam « therapiaminfertilitatis», illicita est, ratione ethica spectata, propter easdem rationes quae illicitam faciunt et procreationem artificiosam heterologam et quamlibet formam maternitatis surrogatae; quae methodus praeterea secumfert innumeras alias difficultates generis medici, psychologici et iuridici.

4. Consilium praeterea a quibusdam in medio estpositum, ad unum finem opportunitatis nascendi dandae creaturis humanis, quae sin aliter certo exstincturae essent, quandam instaurandi formam *«adoptionis praenatalis»*. Huiusmodi propositum, dignum quod laudetur propter intentionem observandi et defendendi humanam vitam, secumfert tamen varias difficultates, non alias ac supra enumeratas.

We also consulted a qualified Latin scholar so that he could translate both paragraphs to Spanish; the result, translated to English for the reader's convenience, was as follows:

3. The proposal that these embryos could be put at the disposal of infertile couples as a *treatment for infertility* is illicit from an ethical point of view, 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.

4. 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.

As can be seen, the translated text only differs from the Spanish text of *Dignitas Personae* in the paragraph that states "is not ethically acceptable", and which the translator of the Latin text has translated as "is illicit, from an ethical point of view". In other words, both texts refer to the non-ethicality of this practice; we will return to this later.

It has also been argued that only in the Spanish text of *Dignitas Personae*, where it refers to embryo adoption, is this proposed as "a moral problem", but that this definition does not appear in the Latin text. However, if we review the two paragraphs of point 19 of the Spanish version of *Dignitas Personae*, at no time do we find that it refers to "a moral problem".

It is true that in both the Latin text (ilicita est, ratione ethica spectata) and in the Spanish one (no es éticamente aceptable, it is not ethically acceptable), the word "ethical" and not "moral" is used, but in our opinion, the ethical illicitness expressed in this text must refer to the moral illicitness, since this term is included in a document, all of moral foundation. Moreover, the same paragraph ends by stating that "this practice would also lead to other problems of a medical, psychological and legal nature", which undoubtedly presupposes that the illicitness cannot be related with these new

difficulties, as it includes the word "others", so it certainly has to be moral.

Finally, another reason that could reinforce the moral illicitness of embryo adoption is the selection that is usually practiced when they are thawed, to transfer the embryo or embryos (generally never more than two) with the best morphological conditions.

This is of course an objectively eugenic technique and consequently morally illicit, because the embryos transferred would have been selected according to their health and physical conditions. If this embryo selection is practiced, it would negatively condition the moral licitness of embryo adoption.

Accordingly, we surmise that it is not easy to guarantee that the embryos to be transferred will not be selected, because it must be remembered that, as previously mentioned, assisted reproduction clinics, probably not as sensitised to the ethical problems to which we refer, focus their marketing on the efficacy of the outcomes obtained. This efficacy is closely linked with achieving the highest possible number of pregnancies and healthy children born, which may be conditioned by the quality of the embryos transferred, so their selection is critical. This difficulty in avoiding embryo selection could be a further reason why the Catholic Church is morally reticent to adopting embryos, since it seems that it is very difficult to guarantee that in practice the aforementioned selection criteria are not followed. As a result, in the interests of the most elementary principle of moral precaution, this technique would have to be qualified as illicit.

Conclusions

Regardless of the above comments, we are of the opinion that the statements in *Dignitas Personae* offer no settled moral assessment of embryo adoption. Thus, we certainly believe that there is no impediment to continue investigating the moral foundations of this practice, until such times as the Catholic Church issues a definitive moral judgement on it.

This position is in line with that expressed by Ratzinger*(38)* on the degrees of assent that must be given to documents of the Magisterium of the Church, when he stated that: the homily of a curate requires a different type of assent than the pastoral letter of a bishop, and this in turn a different type of assent than a decree issued by a pontifical congregation, which requires a different type of assent than a Papal Syllabus, which for its part requires a different type of assent than the dogma: only the latter requires full assent; criticism is essentially possible at any other level, only it has to be subject to an examination of conscience that must be deeper the higher the object of the criticism.

However, insofar as this occurs, we consider that the best attitude of the Catholic faithful is to follow the moral criteria of *Dignitas Personae* which, in our opinion, is morally against the adoption of frozen human embryos.

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