

BIOETHICS AND PUBLIC POLICY

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Part I of this note assesses recent developments in embryonic stem cell research and HIV/AIDS treatment and prevention in light of two recent magisterial texts: Dignitas personae on Certain Bioethical Questions of the Congregation for the Doctrine of the Faith and Pope Benedict XVI's encyclical, Caritas in veritate. Part II explores the implications of these developments for public policy in religiously pluralist societies.

TWO RECENT MAGISTERIAL TEXTS set the stage for our reflections: the instruction, "*Dignitas personae* on Certain Bioethical Questions" issued by the Congregation for the Doctrine of the Faith (CDF) on June 20, 2008; and Pope Benedict XVI's encyclical, *Caritas in veritate*, promulgated on June 29, 2009.¹ Pope Benedict insists that bioethical issues fall under the purview of the Church's social teaching on human rights. However, as

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¹ CDF, Instruction *Dignitas personae* on Certain Bioethical Questions (September 8, 2008). Benedict XVI, *Caritas in veritate* (June 29, 2009) no. 6. These and all Vatican documents cited in this note are available on the Vatican Web site and easily found via a search engine. Unless otherwise indicated, the Vatican sites and all other URLs cited herein were accessed on December 12, 2009.

Maura Ryan has recently argued, we have only “begun to see the implications of a human rights focus for bioethics.”² In Part I, we consider two bioethical issues notable for generating debate on public policy: stem cell research and questions concerning HIV/AIDS. In Part II, we explore what Benedict calls the “strong links between life and ethics and social ethics” for public policy in religiously pluralist polities.³

PART I

Stem Cell Research

Dignitas personae is an update of the 1987 instruction *Donum vitae*.⁴ The Instruction takes up beginning-of-life questions including fertility treatments, embryo adoption, stem cell research, preimplantation genetic diagnosis, gene therapy, and cloning; it concludes by considering the use of cells derived by destruction of human embryos.

The key to the particular applications offered in the second half of the instruction is found in the first half—in the section entitled “Anthropological, Theological, and Ethical Aspects of Human Life and Procreation”: “The body of a human being, from the very first stages of its existence, can never be reduced merely to a clump of cells. The embryonic human body develops progressively according to a well-defined program with its proper finality, as is apparent in the birth of every baby.”⁵

While *Donum vitae* stopped short of declaring the embryo to be a human person, *Dignitas personae* stops only a hairsbreadth from doing so. It reiterates that *Donum vitae* “did not define the embryo as a person,”⁶ and concurs with *Donum vitae* that science gives “a valuable indication for discerning by the use of reason a personal presence at the moment of the first appearance of a human life.”⁷ Moreover, “the reality of the human being for the entire span of life . . . does not allow us to posit either a change in nature or a gradation in moral value, since it [the embryo] possesses full anthropological and ethical status. The human embryo has, therefore, from the very beginning, the dignity proper to a person.”⁸ Accordingly, *Dignitas personae* rejects

² Maura A. Ryan, “Health and Human Rights,” *Theological Studies* 69 (2008) 144–63, at 157.

³ Benedict XVI, *Caritas in veritate* no. 15.

⁴ CDF, *Donum vitae*, Instruction on Respect for Human Life in its Origins and on the Dignity of Procreation: Replies to Certain Questions of the Day (February 22, 1987).

⁵ *Dignitas personae* no. 4

⁶ *Ibid.* no. 5.

⁷ *Ibid.*

⁸ *Ibid.* It is possible to read this document as defining the early embryo as a person. After all, only human persons are the subjects of human dignity. Also, *Donum vitae* and *Dignitas personae* speak of discerning a “personal presence” in the early embryo. What is a personal presence if not the presence of a person?

arguments that offer individuation (the point in development after which neither twinning nor combination of two embryos into one is possible) or later stages as possible points at which full personal dignity may be imputed to the embryo: "The introduction of discrimination with regard to human dignity based on biological, psychological, or educational development, or based on health-related criteria, must be excluded."⁹

To meet *Dignitas personae's* moral standards, then, stem cells must be derived using technologies that: (1) do not harm extant embryos, and (2) do not inadvertently create embryos en route to producing stem cells. In laboratory language, the latter goal is to avoid totipotency while achieving pluripotency. A totipotent cell is capable of producing all the tissues of an adult, as well as the extraembryonic tissues produced by embryos—amnion, placenta, etc. A pluripotent cell can become any of the cell types of the adult organism. The instruction does not define the traits of what it calls a "true" embryo. In recent years, several technologies have been offered to derive stem cells without destroying embryos. Since the moral question hinges in part on the specifics of the technical intervention, some notes on such technologies are apropos.

In 2007, Somatic Cell Nuclear Transfer (SCNT) was achieved in primates.¹⁰ In this process, the nucleus of an adult cell is inserted into an oocyte and induced to differentiate into various tissue types, all genetically identical to the donor cell.¹¹ But a clone, therapeutic or reproductive, is essentially an embryo; thus to use it for stem cells violates the first criterion, that of not harming extant embryos. *Dignitas personae* rules out therapeutic cloning on grounds that it amounts to sacrificing "a human life for therapeutic ends."¹²

Other technologies raise the philosophically trickier question: What counts as an embryo and on what grounds? *Dignitas personae* mentions three technologies as ethically uncertain at present but reaffirms that, if the technologies produce "true" human embryos, "the mere probability that a human

However, such a reading would fly in the face of the document's reaffirmation of the teaching of *Donum vitae*, itself a reaffirmation of the teaching in the CDF's 1974 Declaration on Procured Abortion, which held that determining the personhood of the embryo (its possession of a spiritual soul) is outside the competence of science. See the Declaration, n. 19. At the same time, these documents consistently insist that the Catholic faithful are to protect the embryo "as a person from the moment of conception."

⁹ *Dignitas personae* no. 8.

¹⁰ See J. A. Byrne et al., "Producing Primate Embryonic Stem Cells by Somatic Cell Nuclear Transfer," *Nature* 450 (2007) 497–502.

¹¹ *Ibid.*, abstract.

¹² *Dignitas personae* no. 30. The instruction reiterates the ban on reproductive cloning on grounds that: (1) it violates the inseparability of union and procreation in the sex act; and (2) it amounts to "biological slavery" because of the "predetermined genetic identity" imposed on the clone. See nos. 28, 29.

person is involved would suffice to justify an absolutely clear prohibition of any intervention aimed at killing a human embryo."¹³ The three technologies are parthenogenesis, altered nuclear transfer, and oocyte-assisted reprogramming.

Parthenogenesis is the process by which embryos are made by stimulating an unfertilized ovum to divide as though it were fertilized.¹⁴ Are the stem cell precursors meaningfully identical to an embryo? While parthenogenetic mice have been grown to adulthood,¹⁵ it remains unknown whether human parthenotes can develop fully. If they cannot, then they would lack the "proper finality" that *Dignitas personae* characterizes as a "true" embryo and thus would be acceptable for research. Not all species are identical in how they respond to laboratory manipulations of this kind. To determine definitively whether human parthenotes are capable of further development—whether they are "true" embryos or not—would likely require the kind of study that would be disallowed by *Dignitas personae*'s criteria.

The genetic and epigenetic determinants of organismal organization are the key to understanding Altered Nuclear Transfer (ANT) and its variant, Oocyte Assisted Reprogramming (OAR). The fundamental idea is that what is definitive of a "true" embryo is not merely the complement of human DNA, but the shifting pattern of its expression—which genes are functioning when, and how those genes' products affect the developing whole. The embryo is defined not only materially but also in terms of its dynamic function, in keeping with the insights of systems biology. ANT, first proposed by Stanford's William Hurlbut, proceeds much like SCNT, with one modification: the DNA of the cell introduced into the oocyte to produce stem cells is altered before transfer, so that a gene or genes crucial to the ordered development of the embryo are "switched off" and do not function. The resulting cells "are biologically (and therefore morally) equivalent not to embryos, but to teratomas [a kind of tumor] and other fragmentary and unorganized growths."¹⁶

OAR proceeds by "switching on" a gene or genes in the somatic donor cell nucleus that are expressed in pluripotent cells, but are "off" in totipotent cells. The procedure produces pluripotent cells that are not derived

¹³ *Ibid.*, no. 30.

¹⁴ Jose B. Cibelli et al., "Parthenogenetic Stem Cells in Nonhuman Primates," *Science* 295 (2002) 819.

¹⁵ Tomohiro Kono et al., "Birth of Parthenogenetic Mice That Can Develop to Adulthood," *Nature* 428 (2004) 860–64.

¹⁶ William B. Hurlbut, Robert P. George, and Markus Grompe, "Seeking Consensus: A Clarification and Defense of Altered Nuclear Transfer," *Hastings Center Report* 36 (2006) 42–50. One form of ANT is the reversible silencing of *Cdx2*. For experimental confirmation of this technique, see Alexander Meissner and Rudolf Jaenisch, "Generation of Nuclear Transfer-derived Pluripotent ES Cells from Cloned *Cdx2*-deficient Blastocysts," *Nature* 439 (2006) 212–15.

from totipotent cells, so they can never be said to have had the “finality” present in the very early embryo; that is, they have never had the potential to produce all the necessary tissues in the coordinated fashion definitive of embryos. Thus the stage of totipotency is leapfrogged in order to go directly to the pluripotent stage.¹⁷

Most basically, as Hurlbut explains, ANT/OAR is a technological approach that avoids a political or moral impasse. “In contrast to developmentally or circumstantially based criteria, the ANT proposal rests on clear biologically based criteria for moral standing.”¹⁸ Critics of ANT/OAR raise several questions, including:

- (1) Does this procedure create tissues, or does it create embryos with lethal mutations? Some critics argue that the alteration in ANT is not significant enough to distinguish the procedure morally from SCNT. They ask whether, instead of creating a nonembryonic entity, ANT creates a human entity that is doomed to biological failure.¹⁹ Usually objections of this sort implicitly or explicitly challenge systems biology itself in favor of a simpler DNA essentialism.²⁰

¹⁷ The most common version of this idea involves the Nanog gene, expressed only in pluripotent stem cells. See, e.g., Ian Chambers et al., “Functional Expression Cloning of Nanog, a Pluripotency Sustaining Factor in Embryonic Stem Cells,” *Cell* 113 (2003) 631–55.

¹⁸ Hurlbut, George, and Grompe, “Seeking Consensus” 47.

¹⁹ See Adrian J. Walker, “Altered Nuclear Transfer: A Philosophical Critique,” *Communio* 31 (2005) 649–84; and William Burke, Patrick Pullicino, and Edward J. Richard, “The Biological Basis of the Oocyte Assisted Reprogramming (OAR) Hypothesis: Is It an Ethical Procedure for Making Embryonic Stem Cells?” *Linacre Quarterly* 3 (2007) 204–12. Richard M. Doerflinger, associate director of the United States Conference of Catholic Bishops’ Secretariat of Pro-Life Activities, also raised the “defective embryo” argument; cited in Constance Holden and Gretchen Vogel, “A Technical Fix for an Ethical Bind?” *Science* 306 (2004) 2174–76.

²⁰ Burke, Pullicino, and Richard (“Biological Basis” 210–11) conclude with an analogy: “Let’s consider that the zygote is a complete book containing 30,000 pages, one page for each page in the genome. . . . If you . . . add a new page 200 (that is, insert a gene which blocks differentiation of the embryo past the epiblast stage, as in OAR), would you have an entirely new thing or would you have a defective book?” The point of ANT/OAR, by contrast, is that the cells are incapable of the coordinated patterns of development that, proponents claim, define the embryo. Ultimately, for critics, DNA or genetic essentialism fails on several counts: First, one has to wrestle with the individuality of twins and chimeras (individuals that began as independent embryos). Second, some tumors are genetically distinct from their hosts and follow a (disordered) developmental trajectory. Yet they are clearly not persons. Order is important. Third, an esthetic objection: systems biology presents a much richer appreciation for the actual complexity of the early human embryo than the relatively unsophisticated view of the essentialists. For a life-at-conception view that rejects DNA-essentialism, see Maureen L. Condit, “When Does Human Life Begin? A Scientific Perspective” (October 2008), a white

- (2) Can biological criteria establish moral standing? The 1975 CDF Declaration on Procured Abortion said that biological criteria alone cannot establish personhood; *Dignitas personae* says only that science makes it possible to discern a "personal presence," but the instruction stops short of a declaration of biological criteria for moral standing.
- (3) If biological criteria can establish moral standing, what criteria count and why? Proponents of ANT/OAR offer an account of what it is about the early embryo that constitutes that "personal presence" by asking, "What do we mean by organism, and what degree of organization and intrinsic potential for development are the defining qualities of an embryo?"²¹ The argument seems circular: if at conception the embryo is due the respect of a person, then a good description of the essential qualities of the embryo from conception will suffice as criteria for what counts as personhood. Yet how do we judge the adequacy of a description of the essential qualities of an embryo?

In 2007, a new technology that many regarded as the solution to the need for embryo-destructive research was introduced. Induced Pluripotent Stem cells (iPS cells)²² were created by reprogramming adult skin cells to behave like stem cells; they differentiated into neuronal, cardiac, and other cell types. In 2009, normal mice were cloned from iPS cells,²³ demonstrating their complete pluripotency. A further benefit of this research is that, unlike SCNT and the other technologies used for producing stem cells, no human oocytes were needed.²⁴ Does this settle the embryo wars? Perhaps, but questions remain:

- (1) Are iPS cells as useful as Embryonic Stem Cells (ESC)? The extent to which iPS cells are identical to ESC is uncertain at present. Most

paper for the Westchester Institute for Ethics and the Human Person, <http://www.westchesterinstitute.net/images/LargePRINT.pdf>.

²¹ Hurlbut, George, and Grompe, "Seeking Consensus" 47.

²² See Kazutoshi Takahashi et al., "Induction of Pluripotent Stem Cells from Adult Human Fibroblasts by Defined Factors," *Cell* 131 (2007) 861–72; and, independently, Junying Yu et al., "Induced Pluripotent Stem Cell Lines Derived from Human Somatic Cells," *Science* 318 (2007) 1917–20. Important advances in technique were discovered this year: Knut Woltjen et al., "PiggyBac: Transposition Reprograms Fibroblasts to Induced Pluripotent Stem Cells," and, independently, Keisuke Kaji et al., "Virus-free Induction of Pluripotency and Subsequent Excision of Reprogramming Factors," both in *Nature* 458 (2009) 766–75.

²³ Xiao-yang Zhao et al., "iPS Cells Produce Viable Mice through Tetraploid Complementation"; and, independently, Michael J. Boland et al., "Adult Mice Generated from Induced Pluripotent Stem Cells"; both in *Nature* 461 (2009) 86–94.

²⁴ Francoise Baylis, "ES Cells and iPS Cells: A Distinction with a Difference," Hastings Center Bioethics Forum, 03/04/2008, <http://www.thehastingscenter.org/Bioethicsforum/Post.aspx?id=730>.

scientists involved strongly support the continuation of ESC research alongside iPS cell research until the benefits and limitations of both are clearer. While many hail the iPS discoveries as obviating the need for embryo-destructive research,²⁵ others decry the slowing of ESC research by what they view as unreasonable concerns for embryos.²⁶ It appears that iPS cell research will not soon end ESC research. The close connection of the two technologies,²⁷ at least for the near future, has raised questions of moral compromise in ESC research.²⁸ Questions of consent and the use of cells for human cloning arise also,²⁹ but of course *abusus non tollit usum*.

- (2) Can the process be adequately regulated so as not to arrive at totipotency? Since the cells are being dedifferentiated to the pluripotent stage, a technical issue will be regulating the process so the cells do not continue on to totipotency, at which point the question of embryo destruction arises. Here the procedures of ANT/OAR may resolve these concerns.³⁰

²⁵ E.g., Princeton's Robert George and others. For an engagement with his views, see Ryan T. Anderson, "The End of the Stem Cell Wars," *Weekly Standard* 13.12 (December 3, 2007), <http://www.weeklystandard.com/Content/Public/Articles/000/000/014/387asfv.asp?pg=1>; and Rick Weiss, "Advance May End Stem Cell Debate," *Washington Post*, November 21, 2007, http://www.washingtonpost.com/wpdyn/content/article/2007/11/20/AR2007112000546_pf.html.

²⁶ Heidi Mertes, Guido Pennings, and André Van Steirteghem, "An Ethical Analysis of Alternative Methods to Obtain Pluripotent Stem Cells without Destroying Embryos," *Human Reproduction* 21 (2006) 2749–55.

²⁷ W. Malcolm Byrnes, "Direct Reprogramming and Ethics in Stem Cell Research," *National Catholic Bioethics Quarterly* 8 (2008) 277–90.

²⁸ Mark T. Brown, "Moral Complicity in Induced Pluripotent Stem Cell Research," *Kennedy Institute of Ethics Journal* 19 (2009) 1–22.

²⁹ Insoo Hyun, "Stem Cells from Skin Cells: The Ethical Questions," *Hastings Center Report* 38 (2008) 20–22. See also Hans-Werner Denker, "Induced Pluripotent Stem Cells: How to Deal with the Developmental Potential," *Reproductive BioMedicine Online* 19 (2009) 34–37.

³⁰ For a view that iPS cells are not totipotent, see Shoukhrat Mitalipov and DonWolf, "Totipotency, Pluripotency, and Nuclear Reprogramming," in *Advances in Biochemical Engineering/Biotechnology: Engineering of Stem Cells*, vol. 114 (Heidelberg: Springer Berlin, 2009) 185–99. For a discussion of iPS cells' dissimilarity to embryos, see Cynthia B. Cohen and Bruce P. Brandhorst, "Getting Clear on the Ethics of iPS Cells," *Bioethics Forum* (February 1, 2008), http://www.thehastingscenter.org/Bioethicsforum/Post.aspx?id=710&terms=Brandhorst+and+%23filename+*.html. Some researchers hold that iPS cells are totipotent but not organized, thus not embryos: Maureen Condic, Patrick Lee, and Robert P. George, "The Grail Searchers," *National Review Online* (July 20, 2009), <http://article.nationalreview.com/?q=ZDFkM2ZiOGewOVVkyY2Y2ZTlhNDk2MjdkMwQ3NzZhNmY=&w=MA==>. Those saying iPS cells might be embryos include Gregory Kaebnick, "Embryonic Ethics," *Bioethics Forum*, Hasting Center (January 25, 2008), <http://www.thehastingscenter.org/bioethicsforum/post.aspx?id=706&terms=Gregory+>

- (3) When is a mouse not a mouse? While not relevant to the morality of using iPS cells in research, the creation of cloned mice from iPS cells raises a new question about the beginnings of life. The iPS cloned mice were created by inserting iPS cells made from a donor mouse into a genetically abnormal blastocyst which could produce extraembryonic tissues but not an embryo. The resulting iPS mouse, then, bypassed anything like the zygote (fertilized egg) stage (except when the donor mouse's parents frolicked to produce the donor mouse). It began its existence as a blastocyst. If a mouse can be a mouse without ever being a mouse zygote, it would seem logical to ask whether mousehood may be understood to begin at some point after fertilization. It seems so for some mice.

According to Bernard Prusak the search for adequate biological criteria by which to ascertain what qualities define the embryo (and thus what must be protected as a person) may be irresolvable: "Looking to better biology for the answer means overlooking the problem, which is the picture structuring the debate: there the facts; here the philosophers/theologians explaining the significance of the facts—when instead the very accounts of the facts differ in a way that further scientific research appears powerless to resolve."³¹ Further, Arthur Caplan and Pasquale Patrizio point to an emerging public consensus that seems to have heard and rejected claims of the moral equality of the early embryo with later stages of development.³² While this consensus does not bear directly on ethical question of embryonic status, it is relevant to political efforts to regulate embryo-destructive research technologies. As we will discuss in Part II of this note, whether reasonable persons may differ with respect

Kaebnick+and+%23filename+*.html; and Ronald Bailey, "Do Skin Cells Have Souls? The Debate over Stem Cells Is Back, and Better Than Ever," *Reason.com* (July 7, 2009), <http://reason.com/archives/2009/07/07/do-skin-cells-have-souls>. Holding that it is uncertain but likely is Lee Silver, "More on iPS Cells," *Bioethics Forum*, Hastings Center (February 29, 2008), http://www.thehastingscenter.org/Bioethicsforum/Post.aspx?id=724&terms=Lee+Silver+and+%23filename+*.html. Stating that iPS cells are meaningfully embryonic are Gerard Magill and William B. Neaves, "Ontological and Ethical Implications of Direct Nuclear Reprogramming," *Kennedy Institute of Ethics Journal* 19 (2009) 23–32. On a subsidiary issue, whether iPS cells are embryos or not affects their patentability, see Matthew Herder, "Owning Potential Potential," *Bioethics Forum*, Hastings Center (May 6, 2008), <http://www.thehastingscenter.org/Bioethicsforum/Post.aspx?id=1522>.

³¹ Bernard G. Prusak, "The Problem of the Embryo," *American Catholic Philosophical Quarterly* 82 (2008) 503–21, at 516.

³² Arthur L. Caplan and Pasquale Patrizio, "The Beginning of the End of the Embryo Wars," *Lancet* 373 (2009) 1074–75.

to the precise moral status of the embryo is critical in addressing issues of public policy.³³

Consideration of the moral status of the embryo continues to drive much of the debate on stem cell research both within and outside the Church—but not without cost. As Lisa Sowle Cahill mentioned in the Moral Notes of 2006,³⁴ it should be important to address questions of basic justice in bioethics, but those questions have not been sufficiently addressed. For example, regarding access to therapies, how should research be directed so that it will maximize potential benefits for all?³⁵ Or how might emphasis on stem cell research may skew distribution of available research funds and funding for other social goods, medical and otherwise?

Another question that tends to get lost in the embryonic shuffle is that of the source of oocytes for ESC research and future therapies. Expanded research opportunities and eventual therapies may require huge numbers of human oocytes. While the risks involved in superovulating women and retrieving oocytes by ultrasound-guided needle aspiration are small, they exist. Beyond straightforward complications like infection, hormonal stimulation of oocyte donors can cause Ovarian Hyperstimulation Syndrome, which ranges from mild flu-like illness to (rarely) death. In vitro fertilization clinics routinely pay donors for their ova; payments range anywhere from \$3000 to (at least offers of) \$50,000 or more, depending on donors' perceived desirability as biological mothers. Should women who donate ova be paid, or merely compensated for immediate costs?³⁶ Should women who donate to IVF clinics be treated differently from women who donate ova for research?

It seems clear that payments are likely to reduce voluntariness of oocyte "donation," and make the procedure particularly attractive to the poor.³⁷

³³ To be clear, under consideration here is not whether Catholic bishops may instruct Catholics to regard the embryo as a person from conception, or whether by that teaching they may seek to influence the conscientious decisions of people inside and outside the Church. They may—in their role as authoritative teachers.

³⁴ Lisa Sowle Cahill, "Bioethics," *Theological Studies* 67 (2006) 120–42.

³⁵ See, for example: Ruth R. Faden et al., "Public Stem Cell Banks: Considerations of Justice in Stem Cell Research and Therapy," *Hastings Center Report* 33 (2003) 13–27; and Mark Greene, "To Restore Faith and Trust: Justice and Biological Access to Cellular Therapies," *Hastings Center Report* 36 (2006) 57–63. Another point for iPS cells: the technology is substantially simpler—therefore potentially cheaper—than other forms of stem cell research.

³⁶ Arguing for "capped" payments are H. Mertes and G. Pennings, "Oocyte Donation for Stem Cell Research," *Human Reproduction* 22 (2007) 629–34.

³⁷ G. Pennings and P. Devroey, "Subsidized In-vitro Fertilization Treatment and the Effect on the Number of Egg Sharers," *Reproductive BioMedicine Online* 13 (2006) 8–10.

Will paying egg donors further restrict access to potential treatments by driving up costs?³⁸ In 2009, the Empire State Stem Cell Board approved payments of up to \$10,000 for women who donate oocytes.³⁹ New York thus became the first state to allow the use of state research money to pay egg donors. The International Society for Stem Cell Research Guidelines for 2006 state: "The voluntary nature of the consent process [for donating oocytes] must not be undermined by undue inducements or other undue influences to participate in research."⁴⁰

And a further justice question: when done in carefully regulated environments, the risks of donating ova are small. Will increasing demand for human ova drive researchers to procure them from women in the developing world, where the medical infrastructure is such that complications (for example, infection from the retrieval process) may go untreated? The ISSCR Guidelines warn against "disproportionately" recruiting economically disadvantaged women as donors.⁴¹ Noting that the long-term effects of ovulation induction are unknown, the guidelines also recommend that "women should not undergo an excessive number of hormonally induced ovarian stimulation cycles in a lifetime."⁴² Given that the long-term effects are unknown, what counts as "excessive"? In short, will payment for oocytes open the door to an international market in oocytes without adequate concern for the health of the donors,⁴³ especially adequate tracking of long-term sequelae?

None of the issues relating to oocyte donation are new or novel. The Catholic tradition of social justice, especially its option for the poor, should lead us to be strong voices on behalf of the safety of all involved in stem cell research.

HIV/AIDS

More than 4 million people in low and middle income countries were receiving antiretroviral therapy (ART) by the close of 2008, a tenfold increase over the past five years. Yet over 5 million of the estimated 9.5 million requiring ART in these countries are still unable to access it. More than 2.7 million new infections were recorded globally in 2007, bringing the total of those living with HIV to ca. 33 million. Some 2 million people

³⁸ Josephine Johnson, "Paying Egg Donors: Exploring the Arguments," *Hastings Center Report* 36 (2006) 28.

³⁹ Libby Nelson, "New York State Allows Payment for Egg Donations for Research," *New York Times*, June 26, 2009.

⁴⁰ ISSCR, "Guidelines for the Conduct of Human Embryonic Stem Cell Research," version 1, December 21, 2006, www.isscr.org/guidelines/ISSCRhESCguidelines2006.pdf.

⁴¹ *Ibid.* 11.5.b.i.

⁴² *Ibid.* 11.5. b.v.

⁴³ F. Baylis and C. McLeod, "The Stem Cell Debate Continues: The Buying and Selling of Eggs for Research," *Journal of Medical Ethics* 33 (2007) 726–31.

living with HIV globally were children younger than 15 years of age; most were infected during pregnancy, birth, or breastfeeding. Accounting for two-thirds of those living with HIV worldwide, sub-Saharan Africa remains the most severely affected region, although some countries in the region show signs of stabilization or decline in the rate of infection; three-quarters of all AIDS deaths occurred there in 2007.⁴⁴

Heterosexual transmission remains “the epidemic’s driving force in sub-Saharan Africa.” According to recent demographic and health studies in five African countries (Burkina Faso, Cameroon, Ghana, Kenya, and the United Republic of Tanzania), two-thirds of HIV infected couples were serodiscordant (only one partner infected).⁴⁵ Women remain disproportionately vulnerable: the estimated number of women living with HIV globally increased from 14.1 million in 2001 to 15.5 million by 2007. Women now account for almost 60% of adults infected in sub-Saharan Africa; 40% in South-East Asia; and 30% in Latin America, the Caribbean, East Asia, Europe, and Central Asia. Globally, HIV remains the leading cause of mortality among women of reproductive age.⁴⁶

The ethical implications of the HIV/AIDS pandemic are no less telling. Indeed, the enormity of the pandemic requires a comprehensive and integral response—one linking personal responsibility, in Ryan’s words, to the “constellation of social or contextual factors” rendering women and children especially vulnerable.⁴⁷ Of these complex, interrelated factors, we note in particular the nexus of endemic poverty, gender discrimination, and structural violence.⁴⁸ Poverty, writes Michel Kamazi, “is at once a cause and a consequence of AIDS in Africa.”⁴⁹ Aylward Shorter and Edwin Onyancha concur: “The acute poverty of Africa’s rural villages and teeming urban slums is the classic breeding ground

⁴⁴ World Health Organization (WHO), UNAIDS, UNICEF, *Towards Universal Access: Scaling up Priority HIV/AIDS Interventions in the Health Sector; Progress Report 2009* (Geneva WHO, 2009) 7, 131.

⁴⁵ UNAIDS, “Sub-Saharan Africa,” <http://www.unaids.org/en/CountryResponses/Regions/SubSaharanAfrica.asp>. In these countries, among serodiscordant couples condom use was rare; in Burkina Faso, ca. 90% of cohabiting couples reported not using a condom the last time they had sex.

⁴⁶ WHO, UNAIDS, UNICEF, *Towards Universal Access* 88–89.

⁴⁷ Ryan, “Health and Human Rights” 147. See also Bénézet Bujo, “What Morality for the Problem of AIDS in Africa?” in *AIDS and the African Church: To Shepherd the Church, Family of God in Africa, in the Age of AIDS*, ed. Michael F. Czerny, S.J. (Nairobi: Paulines, 2005) 55–67.

⁴⁸ See Paul Farmer, *Pathologies of Power: Health, Human Rights, and the New War on the Poor* (Berkeley: University of California, 2005) 8–11; see Ryan, “Health and Human Rights” 149–57.

⁴⁹ Michel S. Kamanzi, “Solidarity, A New Categorical Imperative,” in *AIDS in Africa: Theological Reflections*, ed. Bénézet Bujo and Michael Czerny (Nairobi: Paulines, 2007) 17–29, at 22.

for the HIV virus."⁵⁰ Even within the "impoverished populations" of sub-Saharan Africa, notes Agbonkhianmeghe Orobator, "the concentration of HIV/AIDS rises significantly in proportion to the intensity of social exclusion, economic marginalization and pauperization"—systemic inequities borne especially by women.⁵¹

A recent collection edited by Mary Jo Iozzio, *Calling for Justice throughout the World: Catholic Women Theologians on the HIV/AIDS Pandemic* offers eloquent testimony that "women worldwide disproportionately bear the weight of infection, care, and stigma that surround the pandemic."⁵² Citing the Catholic Bishops' Conference of India's *Commitment to Compassion and Care: HIV/AIDS Policy of the Catholic Church in India*, Maria Cimperman underscores how "sexual, economic, and cultural subordination of women" increases "Indian women's vulnerability to HIV/AIDS."⁵³ Margaret Farley summarizes the conclusions of the contributing authors:

Women are the primary caregivers for the sick and the dying, and women are also at greater risk than men when it comes to infection and death. Most women are infected by the spouses, but young girls are also more likely to be infected than young boys. In situations of military conflict, women are targeted for sexual abuse and hence infection.⁵⁴

In a similar vein, African moral theologians Teresa Okure, Therese Tinkasiimire, and Bénézet Bujo question the "practices and customs" that put women "at greater risk," such as fear of sorcery, the practice of polygamy, levirate marriages, inheritance laws, and "belief that HIV infection can be cured by sexual intercourse with a virgin."⁵⁵ Okure decries the "virus" of

⁵⁰ Aylward Shorter and Edwin Onyancha, *The Church and AIDS in Africa: A Case Study: Nairobi City* (Nairobi: Paulines, 1998) 129.

⁵¹ Agbonkhianmeghe E. Orobator, S.J., *From Crisis to Kairos: The Mission of the Church in the Time of HIV/AIDS, Refugees, and Poverty* (Nairobi: Paulines, 2005) 185.

⁵² Mary Jo Iozzio, preface to *Calling for Justice throughout the World: Catholic Women Theologians on the HIV/AIDS Pandemic*, ed. Mary Jo Iozzio, with Mary M. Doyle Roche and Elsie M. Miranda (New York: Continuum, 2008) xiii. See Musa W. Dube and Musimbi Kanyoro, *Grant Me Justice! HIV/AIDS and Gender Readings of the Bible* (Maryknoll, N.Y.: Orbis, 2004); and Teresia M. Hinga et al., eds., *Women, Religion and HIV/AIDS in Africa: Responding to Ethical and Theological Challenges* (Pietermaritzburg: Cluster, 2008).

⁵³ Maria Cimperman, "Change Is Possible: Churches Reading and Responding to the Signs of the Times," in *Calling for Justice throughout the World* 39–44, at 40.

⁵⁴ Margaret A. Farley, "Justice, Faith, and HIV/AIDS in Africa: Challenges for the Twenty-First Century," in *Calling for Justice* 47; see also Farley, *Just Love: A Framework for Christian Sexual Ethics* (New York: Continuum, 2006) 82–89, 230, 238–39.

⁵⁵ Bénézet Bujo, "Community Ethics," in *AIDS in Africa: Theological Reflections* 72–74; see Therese Tinkasiimire, "Responses to HIV/AIDS in Hoima Diocese, Uganda," in *Calling for Justice* 183–91.

patriarchal bias that “each year causes ten million cases of female genital mutilation in Africa—a practice that leaves girls and young women at a greater risk of HIV infection.” It is the “virus,” she says, that “fuels the sex industry—in which young girls (in reality victims of sexual and child abuse) become HIV-infected and then pass the virus to others—tragically in many cases, even to their own babies.”⁵⁶

Coupled with the effects of forced displacement and civil strife, such abuse reveals how violence is interwoven with women’s suffering from HIV/AIDS. In her report on “Violence against Women” to the UN Commission of Human Rights, Yakin Ertürk concludes that for women globally,

recognizing the importance of gender inequality and its manifestations, particularly for young women, and women from minority, indigenous and other marginalized groups, is critical to stemming the spread of the disease. Multiple layers of subordination that increase women’s exposure to violence limit their sexual and reproductive rights, increase stigmatization and discrimination and constrain their access to medical care, as well as feminized poverty, are all causes and consequences of HIV.⁵⁷

The response needed, argue James Keenan and Enda McDonagh, requires a true solidarity of vulnerability and compassion:

The powerful are called to share and seek to overcome the instability in which the weak suffer, to dismantle the structures of violence and oppression, to build a compassionate community of all. The call comes from the authentic needs and capacities of the deprived and suffering and from parallel needs and capacities of the privileged and powerful.⁵⁸

Implicit in this true solidarity is attention to inculturation. Linda Hogan’s volume, *Applied Ethics in a World Church: The Padua Conference*, includes a section on HIV/AIDS in which Paul Chummar describes the pandemic as “An Urgent Task for an Inculturated Theological Ethics.” If, indeed, the Church and the churches are up to the task—this is the question posed

⁵⁶ Teresa Okure, quoted in Kevin Kelly, “Conclusion: ‘Moral Theologian Faces the New Millennium in a Time of AIDS,’” in *Catholic Ethicists on HIV/AIDS Prevention*, ed. James F. Keenan (New York: Continuum, 2000) 325.

⁵⁷ Yakin Ertürk, “Integration of the Human Rights of Women and the Gender Perspective: Violence against Women: Intersections of Violence against Women and HIV/AIDS,” Report of the Special Rapporteur on violence against women, its causes and consequences, UN Economic and Social Council, Commission on Human Rights, E/CN.4/2005/72 (January 17, 2005) no. 80; find link at <http://www2.ohchr.org/english/issues/women/rapporteur/annual.htm>.

⁵⁸ James Keenan and Enda McDonagh, “Instability, Structural Violence, and Vulnerability: A Christian Response to the HIV Pandemic,” *Progressio > Comment* (London: Progressio, 2009) 8.

by Bertrand Lebouché, Jean-François Malherbe, Christian Trepo, and Raymond Lemieux in "Religion in the AIDS Crisis: Irrelevance, Adversary or Ally? The Case of the Catholic Church."⁵⁹

PART II

Pope Benedict XVI's encyclical *Caritas in veritate* reminds us of the "strong links between life ethics and social ethics" for religiously pluralist polities.⁶⁰ Before turning to the social-ethical implications of the life ethics discussed in Part I, we consider the links themselves, formulated as political maxims of respect, reasonableness, and responsibility.

The Maxim of Respect

The "Church's social doctrine," says Benedict, is "based on man's creation 'in the image of God' (Gen 1:27), a datum which gives rise to the inviolable dignity of the human person and the transcendent value of natural moral norms."⁶¹ Supervenient upon moral personhood (prospective purposive agency⁶²), dignity, in turn, is parsed in terms of human rights and correlative duties of forbearance, provision, and protection. For Benedict, love (*caritas*) itself commands that we respect persons' "basic rights" by fulfilling the "reciprocal duties" entailed by the "service of the common good."⁶³ Here the pope's words recall the teaching of Vatican II's declaration *Dignitatis humanae*: "In the exercise of their rights," citizens of faith "are bound by the moral law to have respect both for the rights of others and for their own duties toward others and for the common welfare of all."⁶⁴ Freedom, say the Council Fathers following John Courtney Murray, is thus "to be respected as far as possible and is not to be curtailed except when and insofar as necessary," i.e., in accordance with the requisites of public order.⁶⁵

In exercising religious liberty, citizens thus "ought at all times to refrain from any manner of action which might seem to carry a hint of coercion or

⁵⁹ Both in *Applied Ethics in a World Church: The Padua Conference*, ed. Linda Hogan (Maryknoll, N.Y.: Orbis, 2008) 155–62, 170–81.

⁶⁰ Benedict XVI, *Caritas in veritate* no.15.

⁶¹ *Ibid.* no. 45.

⁶² See Alan Gewirth, *Community of Rights* (Chicago: University of Chicago, 1996) 13–20.

⁶³ Benedict XVI, *Caritas in veritate* no. 43.

⁶⁴ *Dignitatis humanae* nos. 7 and 8.

⁶⁵ *Ibid.* no. 7. See John Courtney Murray, "This Matter of Religious Freedom," *America* 112 (January 9, 1965) 40. Murray favored "as much freedom as possible and only as much restriction as necessary."

of a kind of persuasion that would be dishonorable or unworthy.”⁶⁶ This appeal to worthy persuasion is akin to John Rawls’s view that the exercise of coercive political power is proper “only when we sincerely believe that the reasons we offer for our political action may reasonably be accepted by other citizens as a justification of those actions.”⁶⁷ Foremost among such reasons is the protection and provision of basic rights themselves.⁶⁸ Worthy persuasion will be marked, then, by (1) respect for the dignity and worth of agents (each is equally worthy of representation⁶⁹); and (2) respect for the prerequisites of exercising such agency.⁷⁰ Citizens of faith must seek to translate their distinctive religious claims into shared political values, e.g., rights claims. We will call this the *maxim of respect* in public reasoning.

The Maxim of Reasonableness

But how are we to know that persuasion is indeed “worthy”? To the maxim of respect, we must add a maxim of reasonable interpretation. Citizens of faith must exercise a hermeneutics of charity in interpreting public reasons.⁷¹ At times, of course, explicit translation of such reasons is not necessary. But in the give and take of public reasoning, the maxim of reasonableness requires more: we must ask what it would mean for our interlocutors’ claims to be valid or true from the perspective of our shared political reasoning—the basic rights we hold in common in accordance

⁶⁶ See *Dignitatis humanae* in *Vatican Council II: The Conciliar and Post Conciliar Documents*, ed. Austin Flannery, O.P., rev. ed. (New York: Costello, 1988) 4. See Gewirth, *Community of Rights* 106–65.

⁶⁷ John Rawls, *Political Liberalism* (New York: Columbia University, 1996) xlvii, 217–18. See also Rawls, “The Idea of Public Reason Revisited,” in *The Law of Peoples* (Cambridge, Mass.: Harvard University, 1999) 135–37.

⁶⁸ See Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy* (Princeton, N.J.: Princeton University, 1980) 5–87. See Gewirth, *Community of Rights* 31–70.

⁶⁹ John Rawls, “Justice as Fairness: Political not Metaphysical,” in *Collected Papers*, ed. Samuel Freeman (Cambridge, Mass.: Harvard University, 1999) 401 n. 20.

⁷⁰ See Bernard Williams, “The Idea of Equality,” in *Problems of the Self: Philosophical Papers 1956–1972* (Cambridge, UK: Cambridge University, 1973) 236–37.

⁷¹ Interpreting validity claims entails an extensive application of the principle of charity, whereby the reader assumes the (potential) truth of the other’s claims against the backdrop of his or her “patterns of belief” and interprets the sense or meaning of his or her claim accordingly. See Donald Davidson, “Thought and Talk,” in *Inquiries into Truth and Interpretation* (New York: Oxford University, 1984) 155–70, at 168.

with the maxim of respect.⁷² The charitable interpretation we seek, we must offer in turn (Mt 7:12). For if, in pluralist polities, the grammar of rights makes the respectful engagement of public reasoning possible, the interpretation and application of rights makes it necessary. In Murray's words, our public reasoning presumes the "reasonable disposition to argue our many disagreements in intelligent and temperate fashion."⁷³

The Maxim of Responsibility

How, then, do we adjudicate among our "many disagreements" in difficult matters of public policy? A consequentially sensitive note is sounded.⁷⁴ In accord with the ideal of the common good, we must evaluate public policies in terms of not only negative duties of avoiding deprivation but also the positive duties of protection and provision subject to consequential evaluation. For our moral/legal entitlement to equal respect or consideration justifies preferential treatment for those whose basic rights are most imperiled⁷⁵—what John Paul II called "the option or love of preference for the poor."⁷⁶ Since, then, satisfying rights-based duties will be relative to prevailing political, social, and cultural circumstances, we may ask: of the set of policies deemed reasonable, which will *best* satisfy the mutually implicative basic rights of the most vulnerable? We will call this *the maxim of responsibility*.

Deliberative consensus, to be sure, will be incremental at best and subject to constant revision. As Aquinas realized, law remains an imperfect instrument. Not all we think morally right is fittingly legislated; nor are the claims of justice always apparent. Politics, as always, remains the art of not only the possible but also the reasonable. For the polity is not the citizen writ large. While moral norms govern personal choice, the common good—or, more precisely, public order—necessarily embraces reasonable differences. As Aristotle and Thomas recognized, matters of specific prudential determination may differ among persons of good will. A caveat: in the cases treated below, we are *not* asking whether Catholics may reasonably differ from magisterial teaching; rather we argue that in their shared

⁷² A proposal will be reasonable, in the sense intended here, if it is internally coherent and adequate, i.e., consonant with the moral grammar of basic human rights.

⁷³ John Courtney Murray, "The Bad Arguments People Make," *America* 96 (November 3, 1956) 120–23, at 120.

⁷⁴ See Amartya Sen, *On Ethics and Economics* (Oxford: Basil Blackwell, 1987) 73; see also 47–51, 70–78.

⁷⁵ See Gene Outka, *Agape* (New Haven, Conn.: Yale University, 1972) 20; and Ronald Dworkin, *Taking Rights Seriously* (Cambridge, Mass.: Harvard University, 1978) 227.

⁷⁶ John Paul II, *Sollicitudo rei socialis* no. 42.

public reasoning, Catholics may not dismiss citizens' reasonable differences. Not all reasons, to be sure, are reasonable; and some, e.g., anti-Semitic or racist bias, must be rejected because they violate the grammar of public reason. Yet, ultimately, reasonable consensus must be forged in the crucible of public reasoning, as citizens of differing traditions deliberate "in intelligent and temperate fashion." We will now apply our political maxims in inverse order to the issues considered above.

The Maxims as Applied to HIV/AIDS

The maxim of respect reveals how the systemic deprivation of rights renders poor women and children disproportionately vulnerable to the HIV/AIDS pandemic. Indeed, poverty, gender discrimination, and systemic violence appear as fundamental violations of each of the major subsets of basic human rights. Poverty, as Ryan, Iozzio, Orobator, et al. argued, restricts access to basic health care. Cognate socioeconomic rights extend not only to prevention and treatment of other diseases affecting the most vulnerable (tuberculosis, malaria, and pneumonia, etc.), but also to the infrastructure of public health: adequate nutrition, potable water, education, information, shelter, equitable employment opportunities, etc. So too, the vulnerability of women and their children to the denial of these social goods represents a violation of their civil-political rights, including liberties of effective participation in the social, political, economic, and cultural spheres. Finally, violence suffered by women domestically and in situations of forced displacement and civil strife constitutes a no less fundamental violation of their security rights.

These basic rights, we argued above, are mutually implicative: denying one imperils all. Poverty, Ertürk reminds us, exacerbates gender discrimination which increases "women's exposure to violence."⁷⁷ Infection stigmatizes further, as gender inequities plunge women living with HIV/AIDS into greater poverty. "All of women's basic human rights," says Ryan, "are implicated in assuring a right to adequate health under the threat of HIV/AIDS."⁷⁸

The maxim of reasonableness, in turn, asks us to assess contested policy options from the locus of those most affected, attending, as Bujo and Laurenti Magesa urge, to traditional cultural wisdom.⁷⁹ Only against this background and in the context of a rights regime, Orobator argues, can appropriate assessments of questions like that of the use of condoms be raised. En route to Cameroon, Pope Benedict spoke of the deleterious

⁷⁷ Ertürk, "Integration of the Human Rights of Women" 80.

⁷⁸ Ryan, "Health and Human Rights" 155.

⁷⁹ See Laurenti Magesa, "Recognizing the Reality of African Religion in Tanzania," in *Catholic Ethicists on HIV/AIDS Prevention*, ed. James F. Keenan et al. (New York: Continuum, 2000) 75–84.

consequences of condom use, an argument put forth by some experts.⁸⁰ "You can't resolve [the AIDS epidemic] with the distribution of condoms. On the contrary, it increases the problem."⁸¹ Abstinence and marital fidelity, to be sure, remain critical for primary intervention in sub-Saharan Africa. Yet while conceding that condoms (male and female) are far from a panacea, the prevailing medical consensus recognizes their significant role, especially for serodiscordant couples.⁸²

The maxim of responsibility demands at every level policies that best protect the rights of the most vulnerable. "A-B-C" ("practice Abstinence, Be faithful to an uninfected partner, and use Condoms," the most effective practical strategy for combating HIV/AIDS) will fall short without serious attention to the systemic injustices visited upon women and the poor in HIV-ravaged areas. Among the first of the requisites of justice are: sustained and expanded access to antiretroviral drugs through PEPFAR (the U.S. President's Emergency Plan for AIDS Relief) and the Global Fund to Fight AIDS; continued attention to limiting tuberculosis and malaria; and support for the "individual initiatives, corporate/NGO actions, community-based programmes, and hierarchical/ecclesiastical approaches" detailed by Orobator.⁸³ Farley cites the empowering work of the All-Africa Conference "Sister to Sister" project and the "Women's Initiative: Gender, Faith, and Responses to HIV/AIDS in Africa."⁸⁴ And we note the exemplary initiatives undertaken by AJAN (the African Jesuit AIDS Network) and the array of services offered by church-affiliated organizations like Catholic Relief Services. For such organizations, the rhetoric of rights situates HIV/AIDS in the center of policy deliberations regarding equitable, sustained development: integral and comprehensive policies that secure for the most vulnerable the full range of basic socioeconomic, security, and civil-political rights, including rights of effective participation of people living with HIV/AIDS.

⁸⁰ See Edward C. Green, "The Pope May Be Right," *Washington Post*, March 29, 2009, A15. Green, a research scientist at the Harvard School of Public Health, notes the implications of "risk compensation." Nonetheless he concludes: "All people should have full access to condoms, and condoms should always be a backup strategy for those who will not or cannot remain in a mutually faithful relationship. . . . Moreover, liberals and conservatives agree that condoms cannot address challenges that remain critical in Africa such as cross-generational sex, gender inequality and an end to domestic violence, rape and sexual coercion."

⁸¹ Editorial, *Washington Post*, March 19, 2009, <http://www.washingtonpost.com/wpdyn/content/article/2009/03/18/AR2009031803136.html>.

⁸² See UNAIDS, <http://www.unaids.org/en/PolicyAndPractice/Prevention/Condoms>.

⁸³ Orobator, "From Crisis to Kairos" 91; see 90–142.

⁸⁴ Farley, "Justice, Faith, and HIV/AIDS in Africa" 50–52.

With respect to prevention, counsels of prudence must prevail. A consequentially sensitive assessment of basic rights would, with Pope Benedict, argue against condoms, should their use prove deleterious; but, by the same token, support their use where beneficial, e.g., in preserving the basic health and security of the seronegative spouse of a positive partner. In his article "HIV/AIDS and Its Effects on Refugee Situations in a Christian Perspective," Archbishop Agostino Marchetto, Secretary of the Pontifical Council for the Pastoral Care of Migrants an Itinerant People, cites the South African Bishops' Conference: "where one spouse is infected with HIV/AIDS [both spouses] must listen to their consciences. They are the only ones who can choose the appropriate means, in order to defend themselves against the infection."⁸⁵ Beyond this appeal to conscience, though, lies a need for a reassessment of the moral understanding of condom use itself. As Farley, Bujo, Keenan, et al. argue, condom use in HIV prophylaxis for serodiscordant couples is not properly described as contraceptive, but rather, in Farley's words, "has only to do with preventing people from dying."⁸⁶

The Maxims as Applied to Embryonic Stem Cell Research

For citizens generally, the maxim of respect raises the question of the moral status of the embryo. As in the broader abortion debates, precisely in claiming a legal/moral right to choice, such choice is itself removed from the merely private realm. A legal right protecting choice cannot be abstracted from the ensemble of moral rights and duties affected by choice. Citizens may argue that the embryo is not a fit or full subject of moral rights, or that other rights prevail, but argue they must. So too must those opposing such a right. As Cahill observes, citizens in either camp must address the relation of descriptive embryology to moral interpretation: "The ultimate question is whether full moral status in the human community (personhood, hominization) can be tied to a physiological indicator or developmental line."⁸⁷

Now, perhaps the most compelling argument is that offered by *Dignitas personae*: the appeal to developmental continuity "from the moment of conception." The CDF affirms a "*truth of an ontological character . . . regarding the continuity in development of a human being,*" i.e., that "the embryonic human body develops progressively according to a well-defined program with

⁸⁵ Archbishop Agostino Marchetto, "HIV/AIDS and Its Effects on Refugee Situations in a Christian Perspective," no. 3.6, *People on the Move* 101 (August 2006), http://www.vatican.va/roman_curia/pontifical_councils/migrants/pom2006_101/rc_pc_migrants_pom101_hiv-aids.html.

⁸⁶ Farley, "Justice, Faith, and HIV/AIDS in Africa" 52.

⁸⁷ Lisa Sowle Cahill, "The Embryo and the Fetus: New Moral Contexts," *Theological Studies* 54 (1993) 124-43, at 124.

its proper finality." "The human being is" therefore "to be respected and treated as a person from the moment of conception."⁸⁸ (Mere vitalism, we note, would render moot such appeal to developmental potentiality.⁸⁹)

Dignitas personae poses the question initially raised by *Donum vitae*, "how could a human individual not be human person?"⁹⁰ Well, one might answer, precisely when the developing zygote is not yet perspicuously an individual. Carol Tauer writes, "The phenomenon of twinning and especially that of recombination"⁹¹ offer strong positive evidence that the human soul is not yet present in the early embryo; for, in the traditional Catholic understanding, the soul is indivisible and indestructible, and souls cannot split, fuse, or disappear."⁹² The possibility of twinning and combination of two embryos prior to implantation renders the imputation of "unconditional respect" problematic.⁹³ For, as we saw above, the *evaluative* property of dignity is supervenient upon the *description* of moral persons as ontologically unique. Only thus (i.e., with "ensoulment" or "hominization") would persons' dignity be noninterchangeable, unquantifiable, irreplaceable, etc.⁹⁴

Further doubts arise, says Tauer, when one considers the implications of Thomistic hylomorphic teleology for the degree of developmental complexity presupposed for the infusion of a rational soul.⁹⁵ And the question posed decades ago by Karl Rahner remains germane: In view of the significant proportion of embryos spontaneously aborted prior to or during the process of implantation, will moral theologians today "be able to accept

⁸⁸ *Dignitas personae* nos. 4–5; quotation in *Donum vitae* I, 1.

⁸⁹ Recognition of developmental potentiality remains no less relevant for considerations of artificial nutrition and hydration (ANH).

⁹⁰ *Dignitas personae* no. 5.

⁹¹ Tauer uses the term "recombination" to indicate chimeric embryos.

⁹² Carol A. Tauer, "The Tradition of Probabilism and the Moral Status of the Early Embryo," *Theological Studies* 45 (1984) 3–33, at 30. Tauer notes supporting views of Rahner, Haring, McCormick, Curran, et al.

⁹³ "The phenomenon of twinning and especially that of recombination offer strong positive evidence that the human soul is not yet present in the early embryo; for, in the traditional Catholic understanding, the soul is indivisible and indestructible, and souls cannot split, fuse or disappear" (Tauer, "Tradition of Probabilism" 30).

⁹⁴ Gene Outka, "Respect for Persons," in *The Westminster Dictionary of Christian Ethics*, ed. James F. Childress and John Macquarrie (Philadelphia: Westminster, 1986) 541–45, at 542. Dignity, in Outka's words, is "non-interchangeable, both in the sense that it is unquantifiable and so can never be measured or traded, and irreplaceable in that its loss cannot be compensated (the presence of one person cannot make good the loss of another)."

⁹⁵ For elaboration, see Tauer, "Tradition of Probabilism" 6; and Joseph Donceel, S.J., "Immediate Animation and Delayed Hominization," *Theological Studies* 31 (1970) 79–80.

that 50 per cent of all 'human beings'—real human beings with 'immortal' souls and an eternal destiny—will never get beyond this first stage of human existence?"⁹⁶ Finally, the creation of mice from iPS cells injected into blastocysts reveals that one need not have started as a zygote to be an individual.⁹⁷

As we argued above, the attribution of dignity and hence derivative rights, including the "right to life" itself, is supervenient upon moral personhood. Certain rights may be ascribed in virtue of potential hominization of earlier stages of embryonic existence—an argument offered by the 1975 "Declaration on Procured Abortion"—but there is no simple inference from *posse* (potential personhood) to *esse* (actual personal rights). Neither can we assume that rights supervenient upon potential personhood possess the full moral force of fundamental human rights. As mentioned above, *Dignitas personae* states "the mere probability that a human person is involved would suffice to justify an absolutely clear prohibition of any intervention aimed at killing a human embryo."⁹⁸ The argument here turns not on the absence of doubt regarding ensoulment/hominization, but on traditional casuistic methods for resolving doubts, e.g., regarding the applicability of a law or some particular act relating to its fulfillment.⁹⁹ The magisterium adopts a "tutorist" position—that even the remote probability of ensoulment/hominization suffices for the ascription of actual rights and binding duties.¹⁰⁰

Such a casuistic resolution is reasonable, and, we repeat, to instruct Catholics to act in accordance with it falls within the purview of episcopal authority.¹⁰¹ Yet two questions remain: (1) Is respect for personhood from conception uniquely reasonable, or may other positions be regarded (at least by non-Catholics) as probable? (2) With respect to extramural public

⁹⁶ Karl Rahner, "The Problem of Genetic Manipulation," *Theological Investigations*, vol. 9, trans. Graham Harrison (New York: Seabury, 1973) 225–52, at 226 n. 2.

⁹⁷ Previously, clones began as single-cell entities; thus they passed through a stage analogous to the zygote. Natural twinning, in which individuals derive from single cells or clumps of cells disrupted from one embryo, can be seen as starting as a single zygote. To view the iPS mice as having their origin as individuals rooted in the zygote of the donor mouse raises the odd, counterintuitive, and rationally questionable possibility that one's ontological selfhood might begin generations before one's birth. It seems more accurate to say that not all mice have been zygotes.

⁹⁸ *Dignitas personae* no. 30.

⁹⁹ See Tauer, "Tradition of Probabilism" 14–33.

¹⁰⁰ For a history of probabilism, see John Mahoney, *The Making of Moral Theology* (Oxford: Clarendon, 1987) 135–43.

¹⁰¹ Commenting on Cardinal Joseph Bernadin's view in "The Consistent Ethics: What Sort of Framework?" *Origins* 16 (1986) 345, 347–50, Rawls writes, "I don't assess his argument here, except to say it is clearly cast in the form of public reason. Whether it is itself reasonable or not, or more reasonable than the arguments on the other side, is another matter. As with any form of reasoning in public reason, the reasoning may be fallacious or mistaken" (Rawls, *Political Liberalism* lvi n. 32).

reasoning, must citizens who are not Catholic adopt a given casuistic method in resolving doubt?

The first we have addressed. As to the second, the maxim of respect in a pluralist polity seems to favor methodological pluralism in interpreting its extension (the scope of the maxim) because reasonable citizens, including reasonable citizens of faith,¹⁰² differ not only on the question of the embryo's moral status but also on how to approach the different views on that question. Conscience does not make tutorists of us all; nor does a metacasuistry clearly resolve our differences.

In the face of reasonable differences among citizens regarding the moral status of embryos, the maxim of responsibility invites us to seek a reasonable consensus. Recognizing citizens' reasonable differences, after all, need not impugn either the validity of the Church's teaching (deriving from its "thick" religious tradition), or its reasonableness (its "thin" family resemblance with other reasonable comprehensive doctrines). On the contrary, such recognition permits the Church to make its strongest public case. The principle of charity lets the Church propose reasons more readily acceptable to citizens without demanding complete agreement.¹⁰³ Catholic citizens of faith can agree to policies that fall short of the Church's comprehensive reasons, even as they seek to translate such reasons into a public idiom through ongoing "persuasion and pacific argument."¹⁰⁴ Nor is recognizing others' reasonable doubt a conversation stopper. For doubts regarding the full moral status of the preembryo do not thereby divest it of moral standing, even if citizens differ as to whether such respect is finally "unconditional."¹⁰⁵ Indeed, such respect entails rejecting "a purely utilitarian treatment of embryos."¹⁰⁶

CONCLUSION

In Part I, we explored recent scientific-moral-theological assessments of two critical bioethical issues. In view of what Pope Benedict XVI called the "strong links between life and ethics and social ethics," we devoted Part II to the political implications of these assessments in complex, pluralist polities. As we saw, the Catholic social tradition is a rich resource for bioethicists, even as it challenges our Church to be not only "innocent as doves" but "wise as serpents" (Mt 10:16). Love in truth demands no less.

¹⁰² For differing religious views, see Lisa Sowle Cahill and Margaret A. Farley, eds., *Embodiment, Morality, and Medicine* (Dordrecht: Kluwer Academic, 1995) esp. part 1.

¹⁰³ See John Paul II, *Evangelium vitae* no. 73.

¹⁰⁴ John Courtney Murray, *We Hold These Truths* (Kansas City: Sheed & Ward, 1960) 168.

¹⁰⁵ See Gewirth's "principle of proportionality," in *Community of Rights* 24.

¹⁰⁶ *Dignitas personae* no. 15.

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