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# Is the Human Zygote a Person?

by

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In the June, 2004 edition of *Mayo Clinic Proceedings*, Louis M Guenin, J.D., Lecturer on Ethics in Science in the Department of Microbiology and Molecular Genetics, Harvard Medical School, discussed the morality of embryo use for research.<sup>1</sup> While rejecting a number of arguments in favor of embryo use for research as inadequate, he described embryonic stem cell research as “virtuous if not obligatory” based upon his own “argument from nonenablement.”<sup>2</sup> The gist of Guenin’s argument is that when a woman, “with her partner,” declines intrauterine transfer of an embryo resulting from in vitro fertilization and donates the embryo to medicine, the embryo is “unenabled” to enter a uterus and develop into an infant and may be destroyed in the interest of scientific research. He assumes that an embryo lacking sentience, autonomy, and the ability to form preferences does not attain a soul; accordingly, he denies zygotic and embryonic personhood. Furthermore, he asserts that an unenabled embryo corresponds to no *possible* person, assuming that the decision to decline transfer is irrevocable and the embryo has “left parental control.”<sup>3</sup>

Several letters to the editor in response to Guenin’s argument, including one by this author, were published in the September, 2004 *Mayo Clinic Proceedings*.<sup>4</sup> I noted that the real issue is the ontological status of the zygote, since conception is the only reasonable moment of substantial change and all subsequent change (i.e., embryo, fetus, newborn, etc.) consists of growth and development, which is accidental change. Since the zygote differs substantially from the gametes, and is also human and alive, a human soul is present, since the soul is the principal of life in a material body and the form of the body. I also noted that the Vatican Document *Donum Vitae* (1987) explicitly and presciently rejected the argument from nonenablement, while affirming the human person as a substantial union of body and spiritual soul, the immediate creation of the spiritual soul by God, and the inviolability of the human person from the moment of

conception.<sup>5</sup> Another respondent emphasized that the mother lacks the authority from God to donate an embryo for research.<sup>6</sup> A third respondent noted that aborted fetuses are unenabled and their tissue, along with that of other disadvantaged groups with limited abilities to form preferences, could also be exploited for research.<sup>7</sup>

In his reply to these letters in the same issue, Guenin asserted that the "crucial classification is 'person'."<sup>8</sup> He denied the claim that human life begins at conception, noting that gametes and other cells are alive before conception. He also noted that saying a human is a union of body and soul "says nothing about when that union begins," essentially begging the question as to the moment in which the spiritual soul is infused and a human person is present.<sup>9</sup> Personhood is thus the critical category determining whether the embryo should be respected as inviolable or may be destroyed for research.

In elaborating his position, Guenin concedes that the embryo before and after the mother's declination of intrauterine transfer is ontologically the same, a fact obscured by his renaming the rejected embryo an "epidosembryo."<sup>10,11</sup> He then makes a rather convoluted series of claims, including that the "modern Catholic Magisterium" has turned its back on a theological tradition of delayed ensoulment, has "abandoned the attempt to ascertain when a soul infuses," yet "makes it stand on zygotic personhood" based exclusively on modern genetic science, a position which would essentially deny that the soul is integral to personhood, since a genome "suffices for a person."<sup>12</sup>

### **Actual Versus Possible Person**

Because he assumes that the contemporary Church asserts zygotic personhood, Guenin does not exploit Catholic theological speculation on delayed ensoulment as an argument for embryo stem cell research. Contrary to his claim, the Church has not made a definitive pronouncement on the moment human personhood is present, and even one of the most articulate current defenders of Church teaching against embryonic research concedes the possibility of delayed ensoulment.<sup>13,14</sup> Although Guenin is at pains to develop his "no possible person" argument against the Church's insistence that the embryo, even considered as a human life preparing for a soul (and thus personhood), has sufficient status to be protected, most embryonic research advocates would not scruple over distinctions between possible and actual personhood, but simply exploit the fact that the Church has not definitively committed itself to zygotic or embryonic personhood.<sup>15</sup>

Guenin denies actual embryonic personhood in a number of ways. As noted, he assumes that the embryo's lack of sentience and inability to form preferences and ends are deficiencies inconsonant with personhood.

This reveals a lack of appreciation for the distinction between accidental changes of quantity (growth) and quality (faculty development/use) and the substantial change of generation (conception) and corruption (death). Substance is the stable ground upon which accidental change occurs. An infant is still a person even when not aware or yet able to reason. Even adults are frequently in states in which sentience, choice, and pursual of ends are in potency only (e.g., sleep, anesthesia, etc.).

Obfuscating the crucial distinction between substance and accident, Guenin claims that having the potential to become something valued is not the same as being it. "An acorn is not an oak; we, most of us, do not consider it wrong to sacrifice an unfertilized oocyte."<sup>16</sup> His analogy of an embryo to an acorn is correct; the analogy of an embryo to an unfertilized egg is incorrect. An acorn and an oak tree are the same substance (e.g., *Quercus borealis*) at different stages of development. One may value the oak's accidental qualities more than that of the acorn's, but they are the same substance. The embryo and the man are also the same substance (*Homo sapiens*) at different stages of development. One may value the adult's qualities more than that of the child's or embryo's, but they possess the same dignity. On the other hand, the oocyte, while admittedly alive and human, is a part, not a complete substance, and thus not comparable to an acorn or an embryo. The union of egg and sperm – fertilization – is conception and the only reasonable moment of substantial generation when two parts become an individuated whole or substance. "Human development begins in the zygote stages and unfolds seamlessly from that stage through a series of natural internally self-directed development phases. There is no discreet identifiable moment, nor even series of events after the new organism comes into existence that can be construed as the beginning of a new organism."<sup>17</sup> The seamlessness of human development beginning with the zygote involves accidental changes, which, according to St. Thomas, "...concern not the being but the well-being of the thing generated."<sup>18</sup> Guenin emphasizes a seamlessness of human life from gamete to zygote, but is then significantly silent regarding what moment or series of events is indicative of substantial generation to personhood, although he is quite sure that this does not occur before implantation, since nonenabement precludes "the attainment of a soul."<sup>19</sup>

Guenin does admit the cogency of the argument for protecting "any possible person corresponding to a developing organism."<sup>20</sup> He implies that "conceptuses enabled in the uterus" are, at least, possible persons, a status which may be sufficient for protection. Accordingly, he prefers to keep the focus on the embryo which has been rejected for intrauterine transfer, to which "no possible person" corresponds. In the process, he is silent about yet another embryo; namely, the one yet outside the uterus that is subject to a woman's permissible *acceptation* of intrauterine transfer.

Surely, by his reasoning such an embryo is a “possible person” despite the accident of its current location (petri dish vs. uterus), unless he means to assert that implantation itself involves ontological change. This means that of two ontologically identical embryos in petri dishes, one may be a “possible person” and protected and the other “no possible person” and destroyed based exclusively on an intrapsychic event in another actual person, namely, the mother. As such, this argument is simply the timeworn pro-abortion argument that the mother’s choice trumps everything, including ontology. The embryo, as with the fetus, is treated as *property*, not a person. The implication is that subjective choice even determines objective reality, indicative of an idealist epistemology and subjectivism run amuck. By using the contrasting adjectives “enabled” and “unenabled,” and the contrasting nouns “embryo” and “epidosembryo,” Guenin misleads the casual reader into thinking something has changed *in* the embryo, whereas what has actually changed is the mother’s attitude *towards* the embryo, which is first *permitted* to develop as a product of *in vitro* fertilization, then *not permitted* to develop when intrauterine transfer is declined. Guenin appears to anticipate the potential absurdity of the all-important status of embryonic possible personhood switching on and off as a mother changes her mind about intrauterine transfer, so he adds the qualifiers of (1) irrevocability to her decision and (2) the embryo leaving her parental control as requisites for his argument from nonenablement. But why would a woman pursue *in vitro* fertilization at all if the product *pre-uterine* transfer was not already a possible person?

One of Guenin’s other arguments against embryonic personhood can be easily dismissed. It is his assertion that “an all-loving and all-merciful God” would agree with his argument from nonenablement! This was rightly criticized as reading God’s mind by one of his respondents.<sup>21</sup> He does not seem to entertain the possibility that two wrongs do not make a right. If *in vitro* fertilization is wrong, embryo destruction can also be wrong, even if done to relieve human suffering, since the end does not justify the means. The fact that “we cannot promote any advantage of epidosembryos” does not compel, require, or justify their deliberate annihilation.<sup>22</sup>

### **Human Being Versus Human Person**

To his credit, Guenin appreciates that *the* ethical issue in stem cell research is the personhood of the embryo, which is why he must engage Catholic thought and teaching, since the very notion of personhood was refined by the Church in the fourth and fifth centuries in response to various Christological heresies. As Pope Benedict XVI has written: “...the only way that the concept and idea of ‘person’ dawned on the

human mind was in the struggle over the Christian image of God and the interpretation of the figure of Jesus of Nazareth".<sup>23</sup>

It is this author's contention that conceding a possible delay in personhood following procreation is actually a profound ontological and moral loophole that can be exploited by bioethicists such as Guenin, as well as others who would not have his scruples about possible persons. Ultimately, the category of possible person is irrelevant if the "crucial classification" is personhood, since, logically, a possible person is actually a *nonperson*. Accordingly, the issue of the actual personhood of the zygote and embryo is of critical and ultimate relevance for their defense. It will be important to review what the Magisterium actually teaches in this regard.

Before undertaking such a review, it is important to clarify terms. According to the classic definition by Boethius, a person is an individual substance of a rational nature, a definition which clearly precludes consideration of cells, tissues, or organs as persons, since they are not substances but parts.<sup>24</sup> In actuality, the notion of person is not subject to strict definition, since person denotes a "who," not a "what." Person conveys the ineffability of a unique and incommunicable identity, not just the essential attributes indicative of a class or group. Again, Pope Benedict XVI: "In this idea of relatedness in word and love, independent of the concept of substance and not to be classified among the 'accidents,' Christian thought discovered the kernel of the concept of person, which describes something other and infinitely more than the mere idea of the 'individual'."<sup>25</sup> As more than an individual, a human person is both subject to and subjugates human nature, whereas "human being" refers to just the individualized nature. The former is a who with a what; the latter is just an individualized what, like a particular plant. The Church's notion of personhood is more profound than that advanced by Guenin, who, adopting a pragmatic criterion of truth, reduces personhood to shorthand for how we should treat something for a given purpose, which implies that personhood is conferred by social consensus, not recognized as naturally inherent.<sup>26</sup>

Consistent with the Church's notion of personhood, a being that is a possible but not actual human person, although individual and a substance, could not possess a rational or intellectual nature, which is the definitive note of personhood distinguishing man from animal. If there is no intellectual nature, there is no intellectual soul, since the soul is the principle of life in a material body and the form of the body.<sup>27,28</sup> Form is the determining principle in a material being, responsible for its "whatness." Accordingly, the hypothetical embryo, which may for awhile be a possible person but not an actual person and is devoid of an intellectual soul, must have an animal soul – more likely just a vegetable soul. This kind of soul (and there is only one soul) is material, educed from the potency of prime matter and reduced to the potency of prime matter

with substantial change; i.e., death.<sup>29</sup> This begs the question as to in what way an entity with a corruptible soul is even human if the very hallmark of human nature is absent, namely, an intellectual nature. For man, an intellectual nature requires a spiritual or incorruptible soul, since intellection cannot be reduced to a material organ. In actuality, an entity which is a possible person but not actually a person would be formally indistinguishable from a plant or animal and thus certainly not unique or incommunicable, irregardless of the human origin of its material cause; i.e., human gametes.

Postulating an alive, human entity intervening between conception and human personhood might underscore the continuity of human life in human reproduction, but such an entity would testify to a discontinuity of human persons in procreation, suggesting that new human personhood is something that occurs later between God and parental biological material or, worse, arises from biological material alone, rather than something whose source is immediately, essentially and proximately personal: God, man and wife. The idea of "human life" is an abstraction from actual living human persons. In Aristotelian terms, an individual man is a first substance and life is a universal or second substance. Pope John Paul II explicitly stated that God's own image and likeness is transmitted in procreation, "thanks to the creation of the immortal soul," and he refers to many Biblical passages that speak of "the intimate connection between the initial moment of life and the action of God the Creator."<sup>30</sup> What can this action be other than the infusion of the spiritual soul, the ontological ground of personhood? A possible person but actual nonperson would not be made in the image and likeness of God, Who is a Trinity of Persons. In vitro fertilization is abhorrent because it does not reflect that persons come from persons. Contraception is abhorrent because it makes the act of union between two persons impersonal in its import.

### **What does the Magisterium Say?**

It is important to now review authoritative Church statements regarding the human embryo, statements which will be seen to move tantalizingly close to declaring the human zygote a person.

The Sacred Congregation for the Doctrine of the Faith's *Declaration on Procured Abortion* (1974) clearly states that ensoulment is a philosophical and moral problem not under the competence of science.<sup>31</sup> Its defense of the embryo rests on two arguments: (1) if there is delayed ensoulment, *human* life still precedes ensoulment and must be respected; (2) "...even if a doubt existed concerning whether the fruit of conception is already a human person, it is objectively a grave sin to dare to risk murder."<sup>32</sup> I have just discussed the problems inherent to the first

argument. It overemphasizes the continuity of parental life in human procreation at the price of attenuating the substantial change of human generation to new being. It is also not persuasive for bioethicists like Guenin who make their stand on personhood. It is essentially the argument that the embryo is precious because it uniquely may become a human person and is a "possible person," and so is worthy of protection, an argument Guenin counters by his assertion that the unenabled embryo has no such destiny. As previously discussed, he counters the second argument that the embryo may actually be a person with a number of, ultimately, ineffective counterarguments.

Guenin attributes two actually contradictory positions to the Magisterium: (1) it has declared that ensoulment is a matter that will never be established; (2) it has declared that a person is a genome.<sup>33,34</sup> Both attributions are incorrect. Regarding the first, the pertinent passage he cites, footnote 19 from the *Declaration on Procured Abortion*, states that ensoulment "...is a philosophical problem from which our moral affirmation remains independent for two reasons: (1) supposing a belated animation, there is still nothing less than a *human* life, preparing for and calling for a soul in which the nature received from parents is completed; (2) on the other hand, it suffices that this presence of a soul be probable (and one can never prove the contrary) in order that the taking of life involved accepting the risk of killing a man, not only waiting for, but already in possession of his soul."<sup>35</sup> Another translation of the second point reads "...on the other hand, it suffices that the presence of this soul be probable (and the contrary will never be established) in order that ...."<sup>36</sup> In other words, the *Declaration* actually says it can never be proved that the soul is *not* present, not that the presence of the soul can never be established, which is Guenin's claim.<sup>37</sup>

With regard to Guenin's second attribution, that the Church has declared a person is a genome, the *Declaration* merely states that modern genetic science "brings valuable confirmation" to the "perpetual evidence" that fertilization starts "the life of a new human being with its own growth," a life distinct from the parents.<sup>38</sup> Science is thus employed in support of the "perpetual evidence" of philosophical analysis that life begins at conception, a moment of substantial generation of a new human being, a fact which constitutes the *Declaration's* first argument in defense of the embryo. The new genome may be a sign of human personhood, arguably the material cause, but certainly not the formal cause, which is the soul. The *Declaration* does not assert personhood based upon a new genome.

The key passage regarding the personhood of the zygote in The Sacred Congregation for the Doctrine of the Faith's *Instruction on Respect for Human Life in its Origin and on the Dignity of Procreation (Donum Vitae, 1987)* reaffirms that ensoulment is not under the purview of science:

“Certainly, no experimental datum can be in itself sufficient to bring us to the recognition of a spiritual soul; nevertheless, the conclusions of science regarding the human embryo provide a valuable indication for discerning by the use of reason a personal presence at the moment of this first appearance of a human life: *how could a human individual not be a human person?*”<sup>39</sup> (emphasis added) While acknowledging that the Magisterium “has not expressly committed itself to an affirmation of a philosophical nature” regarding zygotic personhood, this passage forcefully asserts the plausibility that the human zygote actually is a person, which would support the *Declaration*’s second argument in defense of the embryo.<sup>40</sup> This assertion is based upon the use of *reason* (i.e., philosophical thought), which science subserves by measuring quantifiable aspects of material change. This is not science “proving” personhood; rather, it is science in its proper role assisting common sense to identify the presence of a new substance or the physical correlates of a substantial change. Philosophical notions such as substance, in turn, subserve theology (as in the doctrine of Transubstantiation). Identifying the presence of a new substance does not prove the infusion of an immortal soul by God; such an event is accessible to faith alone. Science and philosophy can support faith, but do not replace it.

Having moved to the brink of declaring that the human zygote is a person based on philosophical principles, *Donum Vitae* insists that it be treated *as* a person: “The human being is to be respected and treated as a person from the moment of conception; and therefore from that same moment his rights as a person must be recognized, among which in the first place is the inviolable right of every innocent human being to life.”<sup>41</sup> Note that respect for human life follows from the assumption of human personhood; human personhood is not described as something secondary to, or later than, human life. *Donum Vitae* also explicitly rejects the argument from nonenablement: “The law cannot tolerate – indeed it must expressly forbid – that human beings, even at the embryonic stage, should be treated as objects of experimentation, be mutilated or destroyed with the excuse that they are superfluous or *incapable of developing normally*” (emphasis added).<sup>42</sup>

The papal encyclical letter, *Evangelium Vitae* (1995), quotes the passage from *Donum Vitae* containing the crucial interrogative, “*how could a human individual not be a human person?*”, but reiterates that the Magisterium has not “expressly committed itself” to a philosophical affirmation of personhood for the result of human procreation from the first moment of its existence; i.e., the zygote.<sup>43</sup> Nevertheless, Pope John Paul II appears to assume the personhood of the zygote in several passages. He refers to the modern tendency to “disguise certain crimes against life in its early or final stages by using innocuous medical terms which distract

attention from the fact that what is involved is the right to life of an actual human person."<sup>44</sup> In referring to the Church's "desire to promote a human State," he asserts the "unconditional respect for the right to life of every innocent person – from conception to natural death" as a pillar for civil society.<sup>45</sup>

### Development of Doctrine?

Given the challenge to the personhood of the zygote as reflected by pervasive embryonic stem cell research, the denial of such personhood by many bioethicists, and the grave implications of such nonrecognition for the temporal and eternal existence of countless tiny human beings, is not this the moment for an authoritative development of Church doctrine on the personhood of the product of human procreation from the first moment of its existence? Such a development would not imply a new addition to the deposit of faith or merely a syllogistic conclusion drawn from that deposit, but rather a making explicit of what is implicit in Church teaching from the beginning, an uncovering of the recondite and a manifestation of the import of its perennial teaching in the face of modern challenges to personhood.<sup>46</sup> The Church's (1) venerable teaching on the sanctity of human life from the moment of conception, (2) proscription of abortion at any stage, (3) development of the very notion of person in response to Christological heresies, (4) deliberate employment of the word *procreation*, and (5) insistence that the zygote be treated *as* a person are a sufficient basis upon which to affirm that the product of conception, the human zygote, *is* a person. Such an affirmation would be consistent with modern science, philosophically reasonable, and theologically consonant with progressive statements of the Magisterium. It also appears practically imperative in the face of embryonic stem cell research, abortifacient pills, *in vitro* fertilization, human cloning, heterologous embryo transfer, and the whole vast panoply of modern assaults on the sanctity of human procreation.

Is it quixotic to anticipate a future declaration of the Magisterium to the effect that under the exigencies of modern assaults on personhood, consistent with the deposit of faith, and making explicit what is implicit in the dogma of the Immaculate Conception, "a complete, rational, human soul is infused directly by God at the first moment of human conception and a human person is immediately present who is destined to exist for all eternity"?

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