

**P&M95**

Philosophy and Medicine

**Sarah-Vaughan Brakman**

**Darlene Fozard Weaver**

*Editors*

# **The Ethics of Embryo Adoption and the Catholic Tradition**

Moral Arguments, Economic  
Reality and Social Analysis



**Springer**

# The Ethics of Embryo Adoption and the Catholic Tradition

# Philosophy and Medicine

---

VOLUME 95

---

*Founding Co-Editor*

Stuart F. Spicker

*Senior Editor*

H. Tristram Engelhardt, Jr., *Department of Philosophy, Rice University,  
and Baylor College of Medicine, Houston, Texas*

*Associate Editor*

Lisa M. Rasmussen, *Department of Philosophy, University of North Carolina  
at Charlotte, Charlotte, North Carolina*

---

## CATHOLIC STUDIES IN BIOETHICS

---

*Series Founding Co-Editors*

John Collins Harvey, *Georgetown University, Washington, D.C., U.S.A.*

Francesc Abel, *Institut Borja de Bioetica, Center Borja, Barcelona, Spain*

*Senior Editor*

Christopher Tollefsen, *University of South Carolina, Columbia, SC, U.S.A.*

*Editorial Advisory Board*

Joseph Boyle, *St. Michael's College, Toronto, Canada*

Thomas Cavanaugh, *University of San Francisco, San Francisco, CA, U.S.A.*

Mark Cherry, *St. Edward's University, Austin, TX, U.S.A.*

Ana Smith Iltis, *St. Louis University, St. Louis, MO, U.S.A.*

Sarah-Vaughan Brakman • Darlene Fozard Weaver  
Editors

# The Ethics of Embryo Adoption and the Catholic Tradition

Moral Arguments, Economic Reality  
and Social Analysis

 Springer

Sarah-Vaughan Brakman  
Villanova University  
Villanova, PA  
USA USA

Darlene Fozard Weaver  
Villanova University  
Villanova, PA

ISBN 978-1-4020-6210-0

e-ISBN 978-1-4020-6211-7

Library of Congress Control Number: 2007943466

© 2007 Springer Science + Business Media B.V.

No part of this work may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, microfilming, recording or otherwise, without written permission from the Publisher, with the exception of any material supplied specifically for the purpose of being entered and executed on a computer system, for exclusive use by the purchaser of the work.

Printed on acid-free paper

9 8 7 6 5 4 3 2 1

[springer.com](http://springer.com)

*To our husbands, Jim and Sean, and children,  
Gracie and Julia, Jack and Nate, with love  
and gratitude*

# Contents

<b>Contributors</b> .....	<b>ix</b>
<b>Part I The Morality of Embryo Adoption</b>	
<b>Introduction: The Ethics of Embryo Adoption and the Catholic Tradition</b> .....	
Sarah-Vaughan Brakman and Darlene Fozard Weaver	<b>3</b>
<i>Arguments against</i>	
<b>Heterologous Embryo Transfer: Metaphor and Morality</b> .....	<b>25</b>
Reverend William E. Stempsey, S.J.	
<b>Human Embryo Transfer and the Theology of the Body</b> .....	<b>43</b>
Catherine Althaus	
<b>On the Moral Objectionability of Human Embryo Adoption</b> .....	<b>69</b>
Reverend Tadeusz Pacholczyk	
<i>Arguments for</i>	
<b>Could Human Embryo Transfer Be Intrinsically Immoral?</b> .....	<b>85</b>
Christopher O. Tollefsen	
<b>Ethical Considerations in Defense of Embryo Adoption</b> .....	<b>103</b>
Brandon P. Brown and Jason T. Eberl	
<b>Real Mothers and Good Stewards: The Ethics of Embryo Adoption</b> .....	<b>119</b>
Sarah-Vaughan Brakman	

## Part II The Debate Engaged

<b>Embryo Adoption Theologically Considered: Bodies, Adoption, and the Common Good</b> .....	<b>141</b>
Darlene Fozard Weaver	

<b>From Rescuing Frozen Embryos to Respecting the Limits of Nature: Reframing the Embryo Adoption Debate</b> .....	<b>161</b>
Paul Lauritzen	

<b>Embryo Adoption? An Egalitarian Perspective</b> .....	<b>175</b>
Mary B. Mahowald	

<b>A Protestant View: The Ethics of Embryo Adoption and the Catholic Tradition</b> .....	<b>199</b>
Eric Gregory	

## Part III Morality in the Practice

<b>Development of the National Embryo Donation Center</b> .....	<b>221</b>
Jeffrey Keenan	

<b>An Embryo Adoptive Father's Perspective</b> .....	<b>231</b>
John Stanmeyer	

<b>An Embryo Adoptive Mother's Perspective</b> .....	<b>237</b>
Suzanne Stanmeyer	

<b>Ethical and Religious Directives for a Catholic Embryo Adoption Agency: A Thought Experiment</b> .....	<b>251</b>
John Berkman and Kristen N. Carey	

<b>Embryo Adoption and the Law</b> .....	<b>275</b>
Elizabeth Cason Crosby Cheely	

<b>Artificial Wombs and Embryo Adoption</b> .....	<b>307</b>
Christopher Kaczor	

<b>Index</b> .....	<b>323</b>
--------------------	------------



# Contributors

Catherine Althaus, Ph.D.

Australia and New Zealand School of Government Research Fellow, Political Science Program, Research School of Social Sciences, Australian National University, Canberra, Australia, former Queensland Government Treasury official, and Associate Fellow, Centre for Governance and Public Policy, Griffith University in Brisbane, Australia.

John Berkman, Ph.D.

Associate Professor of Moral Philosophy and Moral Theology, Dominican School of Philosophy and Theology and of Graduate Theological Union, both in Berkeley, California, USA.

Sarah-Vaughan Brakman, Ph.D.

Associate Professor of Philosophy, Villanova University, Villanova, Pennsylvania, USA and Visiting Fellow, James Madison Program, Department of Politics, Princeton University, Princeton, New Jersey, USA.

Brandon P. Brown

Third year medical student, Indiana University School of Medicine, Indianapolis, Indiana, USA and graduate student in philosophy, concentration in bioethics, Department of Philosophy, Indiana University School of Liberal Arts, Indiana University-Purdue University Indianapolis, Indiana, USA.

Kristen N. Carey

Third year medical student, Harvard Medical School, Harvard University, Boston, Massachusetts, USA, and 2005 Marshall and Fulbright finalist.

Elizabeth Cason Crosby Cheely, J.D.

Of Counsel, Stone, Granade & Crosby, P.C., Bay Minette, Alabama, USA.

Jason T. Eberl, Ph.D.

Assistant Professor of Philosophy at Indiana University-Purdue University Indianapolis and Affiliate Faculty of the Indiana University Center for Bioethics, Indianapolis, Indiana, USA.

Eric Gregory, Ph.D.

Assistant Professor of Religion, Princeton University, Princeton, New Jersey, USA.

Christopher Kaczor, Ph.D.

Director of the University Honors Program, The Catholic University of America, Washington, DC.

Jeffrey Keenan, M.D., FACOG, HCLD

Director, National Embryo Donation Center, Knoxville, Tennessee, USA, Director, Division of Reproductive Endocrinology & Infertility, Department of Obstetrics & Gynecology, University of Tennessee Medical Center, College of Medicine, Knoxville, Tennessee, USA, Partner, Southeastern Center for Fertility and Reproductive Surgery, Knoxville, Tennessee, USA.

Paul Lauritzen, Ph.D.

Director of the Program in Applied Ethics and Professor of Religious Studies, John Carroll University, Cleveland, Ohio, USA.

Mary Briody Mahowald, Ph.D.

Professor Emerita, The University of Chicago, Chicago, Illinois, USA.

Reverend Tadeusz Pacholczyk, Ph.D.

Director of Education, The National Catholic Bioethics Center, Philadelphia, Pennsylvania, USA.

Suzanne Stanmeyer, M.A. and John Stanmeyer (candidate for M.A.)

Adoptive parents, ten children: the first through traditional adoption and the remaining nine as embryos. Only one of the nine embryos survived to birth; Virginia, USA.

Reverend William E. Stempsey, S.J., M.D., Ph.D.

Associate Professor of Philosophy, The College of the Holy Cross, Worcester, Massachusetts, USA.

Christopher O. Tollefsen, Ph.D. Associate Professor of Philosophy, University of South Carolina, Columbia, South Carolina, USA.

Darlene Fozard Weaver, Ph.D.

Associate Professor of Theology and Director of Theology Institute, Villanova University, Villanova, Pennsylvania, USA.

**Part I**  
**The Morality of Embryo Adoption**

# Introduction: The Ethics of Embryo Adoption and the Catholic Tradition

Sarah-Vaughan Brakman and Darlene Fozard Weaver

## 1 The Problem of Excess Embryos

In vitro fertilization and embryo transfer (IVF-ET or more commonly IVF), first successfully accomplished in humans in 1978 (Steptoe & Edwards, 1978), has become the treatment of choice for infertile couples in the developed world. IVF, along with other forms of assisted reproductive technology (ART) are considered morally impermissible according to official teachings of the Roman Catholic Church (Congregation for the Doctrine of the Faith, 1987). In IVF procedures, highly skilled technicians facilitate the creation of embryos in a Petri dish after obtaining ovum and sperm.<sup>1</sup> Prior to fertilization, the ova are assessed and those deemed of highest quality are mixed with the highest quality of sperm. Two to five days after fertilization, a number of embryos are implanted via a catheter into the woman's uterus, which has been prepared through hormonal therapy so that uterine conditions are suitable for embryo implantation (De los Santos et al., 2003). Success rates for live births using fresh eggs obtained from the woman undergoing embryo transfer hover between 20% and 30%, with even the most successful clinics reporting rates less than 51% according to reports by the Center for Disease Control (2006) and the Society for Assisted Reproductive Technology (2005).<sup>2</sup>

---

<sup>1</sup> Ovum are obtained through the use of hormonal chemotherapy and then a surgical procedure, while sperm are usually obtained through masturbation or collection via a specifically designed condom-like sheath used during sexual intercourse. The semen is then treated and processed to extract the highest quality sperm from the rest of the matter.

<sup>2</sup> This percentage range is for the use of embryos created from the couples' own gametes. Success rates are higher for transfers where couples have used donor eggs than for transfers using embryos created from the gametes of the couple undergoing IVF. Success rates of IVF however, are notoriously difficult to assess, since reported rates may refer to pregnancies but not live births and may be calculated with reference to different populations and different age groups; success rates look one way, for example, when calculated on the basis of all of a clinic's clients and may look vastly different when calculated with reference to a particular diagnostic population or age group of a given clinic. Therefore, the Center for Disease Control (CDC, 2006) sought to amass this data and to break it down by age and by the standard being used to measure success.

The process for obtaining eggs from a woman is not without great cost, risk, and inconvenience. Typically, clinicians extract as many eggs as they can during egg retrieval surgery, usually fewer than 14, although with young women the number of eggs could be as high as 20 (Keenan, personal communication, 2007). Clinicians fertilize as many eggs as possible. Usually two or three embryos are transferred at a time.<sup>3</sup> Thus, more embryos often are created than can be used in a given cycle. Since 1983, when the techniques for preserving embryos in stasis for future use first resulted in a pregnancy (Trounson & Mohr, 1983), it is now routine practice to freeze couples' unused embryos for their subsequent attempts to achieve pregnancy.

At this time, there are approximately 400,000 frozen embryos in the USA (Hoffman et al., 2003; Eydoux et al., 2004). Roughly 90% of these are technically considered in use by the couples who commissioned them. In the past decade and a half, however, it has become clear that most couples who claim they plan to use their frozen embryos (hence the "in use" status of their embryos), do not do so for a variety of social, psychological, and economic reasons (Laruelle & Englert, 1995; Lee & Yap, 2003). Nevertheless, the remaining 10% of these 400,000 are considered, strictly speaking, "spare" (Hoffman et al., 2003; <http://www.embryooption.org>). In France in 2001, the number of frozen embryos was estimated at over 100,000 with an expectation of a continued increase by 20,000 each year (Eydoux et al., 2004). Countries including Great Britain, Germany, and Australia also have great numbers of embryos "on ice" (Cheely, this volume).

The existence of such high numbers of spare embryos raises practical questions regarding storage, shelf life, and ownership (especially for embryos whose genetic parents can no longer be located to obtain disposition instructions). The issue also bears on ethical and political arguments regarding human embryonic stem cell research. Some have claimed that excess embryos are a ready made source of material for embryonic stem cell research and that such research would do much to solve the "excess" embryo problem; cryopreserved embryos appear to have no chance for development and their destruction in the service of this research potentially would serve humanity.

---

Also, the CDC maintains a database of all IVF clinics and their success rates, though it states that "a comparison of clinic success rates may not be meaningful because patient medical characteristics and treatment approaches vary from clinic to clinic." Available at: <http://www.cdc.gov/art/ART2004/index.htm>. The Society for Assisted Reproductive Technology (SART) maintains the most current data. The data used in this chapter is from 2005 reports from fertility clinics across the United States. The percentage of transfers resulting in live births using fresh embryos from non-donor oocytes is 37.1% for women younger than 35-years old; 29.2% for women 35–37-years old; and 19.7% for women 38–40-years old. The percentages of transfers resulting in live births from previously frozen embryos from non-donor oocytes is, respectively, 31.9%; 27.9%; and 23.1%. Available online at [http://www.sartcorsonline.com/rptCSR\\_PublicMultYear.aspx?ClinicPKID=0](http://www.sartcorsonline.com/rptCSR_PublicMultYear.aspx?ClinicPKID=0).

<sup>3</sup> Transferring a higher number increases the risks of multiple pregnancies and accompanying complications.

Others vigorously reject this type of argument because they consider human embryos to be human beings equal in worth to all other humans, endowed with an intrinsic dignity and enjoying a right to life.<sup>4</sup> Catholic tradition upholds the sanctity of human life from the moment of conception until natural death. The direct and deliberate destruction of innocent human life is gravely wrong and therefore morally prohibited, no matter what the stage of development, and no matter how much potential good is thought to be achieved by such an act.

On May 24, 1996 Pope John Paul II in fact spoke against the freezing and deliberate destruction of these excess human embryos. The statement was not in regard to their use for human embryonic stem cell research, however. Rather, the pope was responding to the planned destruction in Great Britain of some 3,000 frozen embryos which had been cryopreserved for 5 or more years and for whom there was no one to make dispositional decisions (Utley, 1996).

Three months after the pope's statement, on August 21, 1996, *L'Osservatore Romano*, the official newspaper of The Vatican, published an article by a professor of bioethics and moral theology and a Vatican spokesman, O.F.M. Maurizio Faggioni, which discussed the situation of the "surplus" embryos. The article was released to journalists by the Vatican press office and in it the Church raised officially for the first time the concept of "pre-natal adoption" of embryos.<sup>5</sup> Faggioni, while affirming the Church's teaching on the moral impermissibility both of IVF and embryonic cryopreservation, spoke in guarded favor of transferring the wed embryos to another woman if the genetic mother could not be found or could not accept the transfer herself, on the understanding that such a procedure might save vulnerable human beings in danger of destruction and provide them with a family. However, Faggioni cautioned, "the disordered situation itself within which ethical reason must enter to function in this case profoundly colours the attempts at a solution. In fact, there are serious questions which cannot be concealed" (Faggioni, 1996, pp. 4–5).

As of our writing and more than 10 years after Faggioni's article, the Congregation for the Doctrine of the Faith (CDF), the department of the Roman Catholic Church's Curia which oversees Church doctrine, has yet to issue a statement regarding the moral permissibility of what we are calling *embryo adoption*. *Donum Vitae*,

---

<sup>4</sup> A recently developed technique for procuring stem cells, called Altered Nuclear Transfer (ANT), has led to some arguments that this particular method is compatible with respect for human embryos. This is because, according to Dr William B. Hurlbut, the developer of ANT, it ostensibly procures embryonic stem cells without creating a human organism. See W.B. Hurlbut (2005). 'Altered Nuclear Transfer as a Morally Acceptable Means for the Procurement of Human Embryonic Stem Cells,' *Perspectives in Biology and Medicine*, 48(2), 211–228. For a moral argument against ANT see L. Masek (2006). 'A contralife argument against altered nuclear transfer,' *National Catholic Bioethics Quarterly*, 6, 235–240.

<sup>5</sup> This is first time we see a Vatican source discussing it, though there were three Catholic philosophers and theologians who had already begun to debate the practice immediately prior to and during this time frame. See Grisez, 1997; Smith, 1995, 1996; and Surtees, 1996.

currently the most complete official Catholic instruction on the value of embryonic life and the practices of ART, is expressly opposed to IVF but is silent about embryo adoption.<sup>6</sup> More recently, the Pontifical Academy for Life (2004) acknowledged that embryo adoption is a matter for genuine debate among Catholic moral theologians. One fascinating aspect of such debates is that those who usually agree on issues regarding respect for human life – euthanasia, abortion, human embryonic stem cell research, and ART – find themselves divided and often embattled on the question of embryo adoption’s moral status.

To date, debates about embryo adoption have been framed in this manner: is it morally permissible (i.e., intrinsically morally licit) to transfer a genetically unrelated embryo into the uterus of a (married) woman (a practice also called heterologous embryo transfer, or HET)? Our volume takes up this question in various ways and with various conclusions, including, to begin with, questioning this particular way of naming and framing ethical inquiry into the practice. In short, this book introduces readers to Catholic debates on embryo adoption, advances going lines of argument for and against the practice, and expands the terms on which embryo adoption is morally evaluated from within Catholic tradition. Since our goals have shaped the topics and perspectives we chose to include in this volume, as well as the approaches of our own essays included herein, we describe below the rationale for our volume and the contributions it makes to moral reflection on this contested practice. First, however, we provide a brief overview of the practice we are calling *embryo adoption*, followed by an argument for why we are choosing the language of adoption to describe the practice we are considering.

## 2 What Is Embryo Adoption?

Though rarely done until recently, HET has been in existence since 1983 (Eisenberg & Schenker, 1998). When couples choose not to gestate their cryopreserved embryos, they are left with four options other than transferring the embryos to another family willing to gestate and raise any child thus born: donation to research, destruction, letting die by the wing, or continued storage until the embryo is no longer viable.<sup>7</sup> For

---

<sup>6</sup> In the early debates on embryo transfer, Catholic scholars focused on interpreting Church teaching on embryo transfer from two passages in *Donum vitae*: “In consequence of the fact that they have been produced in vitro, those embryos which 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 safe means of survival which can be licitly pursued.” (CDF, I, 5) and “the bond existing between husband and wife accords the uses, in an objective and inalienable manner, the exclusive right to become father and mother solely through each other.” (CDF, II.A, 2.) Emphasis added. For a discussion of this early debate, see D.F. Weaver (forthcoming). ‘Embryo adoption: Expanding the terms of the debate,’ L. Hoag (Ed.) *Catholic Theological Ethics in the World Church*. Orbis.

<sup>7</sup> See Keenan, this volume, for time frame of frozen embryo viability.

some couples, embryo transfer to another couple offers “an alternative that they may find morally more palatable than donating their embryos to research” (Brakman, 2005, p. 1) or allowing their ultimate destruction via the alternatives. Either because they view the practice as something akin to gamete donation or because they do consider embryos children or perhaps “virtual” children (de Lacey, 2005), these couples seek to make their embryos available to others.

Just as couples with excess embryos may “donate” them for a variety of reasons, so do individual women and couples decide to pursue embryo adoption. From a clinical standpoint, embryo adoption offers a response to infertility or hereditary disorders, is less expensive than IVF and traditional infant adoption,<sup>8</sup> and provides a woman with the experience of pregnancy and birth as well as more control over the pre-natal environment than one would have in cases of post-natal, or traditional adoption (Eisenberg & Schenker, 1998, p. 52; Lee & Yap, 2003, p. 992; Robertson, 1995, pp. 885–886). In this respect, the practice may be viewed as one among a number of forms of assisted reproduction. Exact numbers of transfers like this done in fertility clinics are unavailable since many clinics do not track embryo transfers as such.

Other women and couples, infertile or not, however, are moved to adopt embryos primarily because of pro-life convictions. Indeed, when Great Britain announced its plans to destroy those 3,000 embryos, a number of women, including two nuns, came forward offering to gestate the embryos (Demartis, 1998). Not all women who are motivated in this regard necessarily intend to be the social parents of any children thus born to them (we discuss the import of this particular scenario below).

The actual process of matching persons with excess embryos to others who wish to have embryos transferred to them can vary significantly. There certainly are important differences in the experience of making an anonymous, online match with no intention of follow-up between donors and recipients, and that of recipients undergoing a home study to be approved as adoptive parents, preparing a profile for donor parents to consider, waiting to be selected by donor parents and maintaining some ongoing contact with them following the birth of children, (say by exchanging letters and photos or sharing occasional visits). These differences are part of the moral reality of particular kinds of embryo adoption. The chapters here by Jeffrey Keenan and John Berkman and Kristen Carey consider such matters more fully.

It is also the case that a sizable number of couples effectively abandon their excess embryos, for example, by relocating without providing their fertility clinic updated contact information. Moreover, as we indicated above, many with excess

---

<sup>8</sup>HET in fact appears on average to be significantly less costly (estimates for HET at \$3,600–\$4,000) than domestic infant adoption which can cost anywhere from \$4,000 to \$35,000 (usual range \$15,000–\$25,000), with international adoption costs ranging between \$20,000 and \$50,000. The financial comparison between HET and infant adoption, however, must include the appreciation that the costs for HET are per cycle. The higher costs of infant adoption reflect the fees paid for a “take home” baby, whereas with HET, a couple might attempt three cycles of HET for a total of approximately \$12,000, still not achieving a live birth.



cryopreserved embryos do not plan to use them but also do not wish to relinquish them, either for research or to give to another couple. Given the possibility that embryo adoption may in some circumstances be moral, chapters by Mary Mahowald and by Sarah-Vaughan Brakman extend embryo adoption analyses by exploring the question whether donation of excess embryos should be mandatory for those who are finished with their reproductive plans. The legal reality of mandatory donation is detailed in the chapter by Cason Cheely who helpfully shows through her work which countries and which states in the USA have such laws and how they fare in practice.

Any transfer of cryopreserved embryos, whether to the genetic mother or to another woman, will involve the thawing and transfer process. Let us begin with a brief discussion of the freezing method and then with the thawing and transfer procedure.<sup>9</sup> Embryo cryopreservation involves mixing the embryo with a protective chemical solution to prevent damage during freezing, placing the embryo or embryos in a plastic or glass container (embryos typically are stored in groups sized according to how many embryos would be thawed at one time) and placed within liquid nitrogen, which a special storage tank maintains at a low temperature. Embryos are thawed at room temperature and the protective chemicals are removed. Roughly 25% of embryos die during the thawing process, and some are damaged during the freezing and thawing process, so the number of embryos thawed at a given time typically exceeds the maximum number of embryos that would be transferred to a particular woman. If the embryos were frozen earlier than the blastocyst stage, they are placed in a culturing solution to develop further prior to transfer.

Embryo transfer can be timed to coincide with a woman's natural menstrual cycle, in which case the embryos would be transferred a couple days after ovulation. However, as Suzanne Stanmeyer, herself an embryo adoptive mother, describes in her chapter, more frequently a woman's uterus is prepared through hormone therapy. The transfer itself does not take very long. As with IVF, the embryos are inserted into the woman's uterus via a catheter. As John Stanmeyer (Suzanne's husband) discloses in his description of the process, the husband may be present, and even an active part of this transfer procedure. Afterwards, the woman rests briefly before leaving the clinic and is encouraged to rest at home. She begins taking progesterone shots to support a pregnancy. Roughly 2 weeks later a blood pregnancy test is performed. Ultrasound and additional blood work follows to confirm or rule out pregnancy.

In addition to the process as sketched above, the procedure and its aftermath typically entails other aspects which necessarily raise important ethical considerations, some of which concern the selection of embryos for transfer (embryos are graded on quality scales), issues regarding donor screening and matching with recipient couples, fees and insurance coverage, health risks (including the risk of multiple pregnancies), along with similar questions regarding the disposition of

---

<sup>9</sup> See M.I. Cedars (1998). 'Embryo cryopreservation,' *Seminars in Reproductive Endocrinology*, 16(3), 183–195.

embryos in the case of the would-be adoptive parents' divorce, death, or failure to provide updated contact information following a relocation. Many of the chapters in this volume take up these questions.

Other chapters, however, focus on the fundamental question of whether it is morally licit to transfer genetically unrelated embryos into a woman in the first place. And irrespective of where some authors fall on the permissibility debate, many critique the use of the terminology of *adoption* to describe heterologous embryo transfer (HET). We therefore turn now to a discussion of the language used to name this practice; in doing so we can map the terrain of embryo adoption debates and delineate the scope of our inquiry.

### 3 Why Call It Embryo Adoption?<sup>10</sup>

In 2001, the United States Department of Health and Human Services initiated a program to promote public awareness of heterologous embryo transfer under the rubric of *embryo adoption*; they subsequently have renewed funding for the program each year, which remains in effect as of this writing, though the name has been changed to Public Awareness Campaigns for Embryo *Adoption/Donation* (emphasis added) to reflect political pressure concerning the terminology of “embryo adoption.”<sup>11</sup> The term *embryo adoption* was created by the organization Nightlight Christian Adoptions, which administers Snowflakes Embryo Adoption along the same lines as traditional infant adoption:

The director of Snowflakes, the agency's embryo program, explained that ‘we use the adoption language and materials with the hopes of setting a precedent that someday the court will say embryos need to be handled like any other child.’ Knowledge of the origin of the term embryo adoption has fueled sharp criticism of the Bush administration [for the creation of the Public Awareness Grants on Embryo Adoption] by abortion rights groups. (Arekapudi, 2002)

In an online essay for *MSNBC* bioethicist Arthur Caplan (2003) said, “This [Embryo Adoption Public Awareness Campaign Grant] is a nice way to score points with those who advocate the view that embryos are actual babies and should not be used for research purposes.”<sup>12</sup> He went on to say, “using terms like ‘adoption’ encourages people to believe that frozen embryos are the equivalent of children. But they are not

---

<sup>10</sup>Material in this section, including the chart, also appears in S.V. Brakman (2007). ‘Paradigms, practices and politics: Ethics and the language of human embryo transfer/donation/rescue/adoption,’ in M.J. Cherry & A.S. Iltis (Eds.), *Pluralistic Casuistry: Moral Arguments, Economic Realities, and Political Theory, Essays in Honor of Baruch A. Brody* (pp. 191–210). Dordrecht, The Netherlands: Springer, used with permission.

<sup>11</sup> Available: [http://12.46.245.173/pls/portal30/CATALOG.PROGRAM\\_TEXT\\_RPT.SHOW?p\\_arg.](http://12.46.245.173/pls/portal30/CATALOG.PROGRAM_TEXT_RPT.SHOW?p_arg.)

<sup>12</sup> Available: [http://www.msnbc.com/id/3076556/print/1/displaymode/1098/.](http://www.msnbc.com/id/3076556/print/1/displaymode/1098/)

the same. In fact, infertile couples who want children can frequently make embryos but they cannot make embryos that become fetuses or babies” (Caplan, 2003). John Robertson (1995, p. 891) claims, “The most significant point is that there is no ‘child’ to be adopted because in most legal systems embryos are not legal persons.”

We deliberately chose the terminology *embryo adoption* for this volume because we think it most accurately reflects the phenomenon of some kinds of HET especially in regard to the lived experience of the genetic couple and the recipient couple. This is an argument we will pursue below. Caplan and Robertson seem to reject the designation *embryo adoption* primarily because of its pro-life connotations, which admittedly factored in the political use of the term.<sup>13</sup> However, for different reasons, several of our contributors take issue with decisions like ours to use *adoption* language. William Stempsey and Mary Mahowald, for example, argue that adoption language influences moral analysis of HET from the outset and limits attention to the ethical issues of the practice. Christopher Tollefsen argues that embryo transfer occurs for a variety of reasons, only one of which is to adopt a genetically unrelated embryo; hence if embryo transfer is intrinsically wrong, then embryo adoption, which necessarily involves it, will be wrong as well. Catherine Althaus argues that the language of embryo adoption to describe a woman’s choice to seek pregnancy apart from the conjugal act renders the moral object of her choice ( *what* she is choosing) in a particular, unwarranted fashion.

At this point, we wish to say that embryo adoption is a morally complex practice about which persons of good will and many shared beliefs and moral convictions nonetheless disagree. Our book thus embraces divergent views and arguments. Naturally, the presence of any given author’s work in this volume does not indicate agreement with us – neither regarding the volume’s overall framing of moral inquiry, nor the arguments we each advance in our own chapters. In the absence of an official Catholic teaching regarding embryo adoption, we believe these diverse arguments testify to the vibrancy of Catholic moral theology as an engagement with and contribution to a living tradition.

Stempsey, Mahowald, Tollefsen, Althaus and, indirectly, Paul Lauritzen raise legitimate questions about the “freight” that “adoption” language carries as a name for HET. Their concerns illustrate that it is worth considering the seemingly even-handed language bioethicists and the fertility industry typically and historically use to designate the practice: *embryo donation*. The language of embryo donation evolved from current practices and nomenclature regarding what is known as gamete donation – the use by a couple of sperm and/or oocytes from other individuals to create in vitro an embryo that will be implanted in the would-be social mother (ironically, though, gamete donors are not truly donors since they are paid for their time and risk, while embryo donation does not provide the donor couple with financial compensation.)

Couples with excess embryos vary in their attitudes toward and decisions regarding their excess embryos. The data shows that the majority of couples who have used IVF,

---

<sup>13</sup> However, given that adoption may be used with entities other than children (pets, legislation), the word does not necessarily denote moral status of the embryo, See Brakman (2007).

independent of their initial views regarding the moral status of embryos (meaning regardless of whether they thought of themselves as having either pro-life or pro-choice views initially), now view their frozen embryos as either children or “virtual” children (de Lacey, 2005, pp. 1665–1667). In one study, couples said that they could not merely donate the embryos as so much genetic material, but rather “embryos were attributed a personhood that lack physical presence but contained biology and spirituality . In this sense they acquired a virtual personhood” (de Lacey, 2005, p. 1665). Many of those interviewed in this particular study said in fact that they did feel like embryo donation would be placing their child for adoption and that they could not do this. This may also explain in part why the donation rate is low among couples for whom IVF was successful. These couples are now acutely, if not in most cases painfully, aware of the fact that the embryos may at the very least *become* children – their genetically related children.

In short, many of those who went to great lengths to achieve genetic parenthood do not want to see themselves now as “giving up” their children. Therefore, employing the term *embryo donation* makes it seem to the couples with excess embryos that they are making a gift of their unused genetic material to other infertile couples (<http://www.embryoadooption.org/GenPracticalUsage.asp>). One might also postulate that *donation* terminology makes the contribution/significance of the gamete donors (read genetic parents) seem more distant and clinical, which may be aesthetically appealing to fertility patients and instrumentally useful for clinicians. However, in light of the discussion above, it seems this terminology of *embryo donation* not merely obscures but rather exacerbates the discomfort of couples by not speaking to the reality of their situation or to their experience. To their minds, they are not merely donating tissue (like gametes), but rather something much more significant.

The language of *embryo donation* also fails to distinguish between donations for research purposes and donations to other families. Further, it conflates the donation of embryos with the donation of gametes. The more “neutral” term *embryotransfer* has related problems. *Transfer* refers to thawing embryos and placing them somewhere – but it is not clear the location of placement – to the genetically related woman’s womb, to the unrelated woman’s womb, or to an artificial womb.

Hence, we readily grant Tollefsen’s point that not all embryo transfers (even precisely all HETs) are embryo adoptions per se (Weaver, forthcoming). Not all transfers of embryos into the womb of a genetically unrelated woman or even into an artificial womb, necessarily include the plan to raise an only child(ren) thus born. Some moralists, for example, use the term *embryo rescue* to describe embryo transfers undertaken on the basis of pro-life convictions to “save” cryopreserved embryos but without a commitment to become the social parent of an only child(ren) born; they also differ in their moral evaluation of such “rescues.”<sup>14</sup> The language of rescue reflects a moral vision of the embryo as a unique and irreducibly valuable

---

<sup>14</sup> See J. Berkman (2003). ‘Gestating the embryos of others,’ *National Catholic Bioethics Quarterly*, 3, 309–329; W.E. May (2006). ‘The object of the acting woman in embryo rescue,’ in T.V. Berg & E.J. Furton (Eds.), *Human Embryo Adoption: Biotechnology, Marriage and the Right to Life* (pp. 135–163). Philadelphia, PA; Thornwood, NY: The National Catholic Bioethics Center and The Westchester Institute for Ethics & the Human Person.

human being. John Berkman explores the adequacy of *rescue* terminology discussing the concept itself in an essay published elsewhere:

The quintessence of the notion of rescue is that first, it is done in an emergency situation at significant risk to the rescuer, and second, the rescuer has little or no prior or subsequent relationship with the person rescued. While “rescue” at times gets stretched to apply to situations where one of these characteristics is absent, these two features lie at the heart of the heroic and altruistic character ascribed to the action of the paradigmatic rescuer. (Berkman, 2003, p. 323)

Berkman goes on to say that embryo adoption is neither an emergency case nor a situation where a woman has a “transitory” relationship with the embryo (e.g., the gestational relationship is not transitory, nor is the social parenting relationship.) Moreover, he notes the oddity of referring to the “decision to become a parent (either gestational or adoptive mother) as an altruistic one” in the main (Berkman, 2003, p. 324 n. 43). While more could be said here about the aptness of “rescue,” we take Berkman to be right about the ill fit of the term. Pro-life convictions might indeed motivate a woman or couple to “rescue” cryopreserved embryos, but when the “rescue” is part of a larger commitment to parent any children who are born, this motivation comprises only one part of their much more profound undertaking (hence the chapter by Brown and Eberl uses the language of “adoptive rescue”). When this commitment to parent is lacking, individuals and couples arguably are engaged in a morally different sort of embryo transfer.<sup>15</sup>

Therefore, our view is that all instances of HET occur as particular morally freighted endeavors by real persons embedded in concrete moral and spiritual lives, situated and shaped by cultural, political, economic, and gendered contexts, seeking various ends which are almost certainly a mixture of desires, legitimate and even corrupt ones, intentions both self-giving and selfish, and with reasons that are variously grounded in and contrary to the moral truth of human life in and before God. Thus, we grant Stempsey’s and Mahowald’s point that using *adoption* language shapes moral reflection on the practice from the outset. But since moral reflection always proceeds from some perspective, and since the process of morally evaluating and morally naming an action go hand in hand, we think the quest for an ostensibly morally neutral description of this – or any – particular sort of HET is misleading (Weaver, forthcoming). Given the difficulties associated with terms like embryo rescue, donation, and transfer, we like many others favor the language of *embryo adoption*. Even more importantly, we find that embryo *adoption* arguably captures more faithfully aspects of the experience of parties to the practice. Although the adoption paradigm is not without difficulties, we use this term to reflect expectations that a woman and her husband will be the parents (in all meaningful

---

<sup>15</sup> Ethicists differ concerning the moral significance of a commitment to parent for the question of HET’s moral permissibility. Berkman (2003) argues that HET apart from a commitment to parent is morally wrong. Grisez (1997) and May (2006) argue that HET is morally permissible without this commitment. Still others argue that HET is best named as surrogacy, with or without the commitment to parent (Pacholczyk, this volume).

---

 The similarities between HET and traditional adoption
 

---

- 1) No genetic connection between social parents and child
  - 2) Reasons given for reluctance to give embryos to other couples: having unknown children, possibility of sibling marriage, legal ramifications (Burton & Sanders, 2004) are similar to reasons given for reluctance of birth parents to place infant for adoption
  - 3) Nurture is considered the basis of parental bond over nature. This “helps acceptance that one’s donated embryo evolves into another couple’s child. It presupposes differentiating between parents and genitors” (Laruelle & Englert, 1995). Literature in traditional open adoption shows bonds strong between adoptive parents and children
  - 4) The possibility of the existence of full siblings in another family exists for HET and infant adoption and raises the same sorts of ethical and psychosocial challenges
  - 5) Psychosocial implications for parents of raising a child who has no genetic linkage with either parent
  - 6) Disclosure issues with both child and others about nature of conception and genetic heritage is present for HET and infant adoption
  - 7) Psychosocial implications for genetic parents of the existence of a related child for whom they are no longer considered the parents will be present for those who give embryos to others as it is for birth parents in infant adoption
  - 8) Need to attend to the emotional and psychosocial developmental needs of a child who has genetic links to another man and woman
- 

---

 The differences between HET and traditional adoption
 

---

- 1) Pregnancy and birth are experienced by the social mother with HET and the pregnant female becomes biologically related to the child. This means that pre-natal risks to the child are more controlled for in HET than may be the case in infant adoption. HET also affords greater privacy for the adoptive parents regarding the use of HET versus adopting an infant. Finally, due to pregnancy, HET is more medically risky pre-birth and physically draining pre- and post-birth for the rearing mother in HET than is the case for the rearing mother in infant adoption
- 2) HET significantly less costly than infant adoption (\$3,600–\$10,000 compared to \$9,000–\$35,000), the “take home baby” rate is 20–40% per try for HET, compared to total costs for infant adoptions
- 3) HET has a more definite time line than infant adoptions (9 months per try versus waiting time of 1 month–5 years +)
- 4) 76% of clinics do not allow donors any control over who receives their embryos (Kingsberg et al., 2000). However, all infant adoption professionals allow for choice by birth parents of closed, semi-open or fully open adoptions, with birth parents choosing adoptive parents in all but closed adoptions

senses of the word) of any resulting children. This at once displays irremovable analogies to traditional adoption.

Let us consider the similarities and differences between embryo transfers to unrelated women and adoption as traditionally conceived: As seen in the chart above, HET, when undertaken by a married couple who commit themselves to parent any children thus born to them, is both similar to and differs from infant adoption. The similarities are those that are intrinsic to the natures of both HET and domestic infant adoption: the lack of genetic relatedness between the rearing parents and the child, the possibility of having full genetic siblings not raised in the same family, the similarity of the reasons given by couples for their reluctance to choose either HET or adoption, and a number of psychological, social, and ethical issues that arise for the genetic parents, the recipients who become the social parents, and especially for the individual who is born and raised as a result of these practices. (In the adoption world, these three parties are referred to as the members of the *adoption triad* – birth parents, adoptive parents and child.) Notably, another similarity concerns reluctance to place one's offspring with another family, including, for example, the fear of the (highly unlikely) possibility that in the future one's child would unknowingly marry a genetic sibling (Nachtigall et al., 2005, p. 433).

What of the differences between HET and traditional adoption? As listed in the chart, HET affords a couple the opportunity to control the physical maternal environment, perhaps to begin bonding sooner, and to experience the birth of the child whom they will raise but to whom they are genetically unrelated. HET is also more medically risky for the woman than infant adoption; it may be generally less expensive; and the waiting time is on average shorter. All these appear as matters of fact and do not seem on first blush to have much, if any, normative weight.

However, the fact that HET involves becoming pregnant with the child one has adopted may constitute a decisive moral difference from infant adoption, as chapters by Catherine Althaus and Tadeusz Pacholczyk argue. Both of these chapters advance the argument post-natal adoption is licit but embryo adoption is not due to the special moral status and implications of pre-gnancy/gestational motherhood.

Despite the fact that there might be different moral evaluations of pre- and post-natal adoptions, it does not necessarily follow that the word "adoption" should be reserved for the latter. Since, (a) the data showing that those couples who have created embryos do consider them to be at least as "virtual" children; (b) these same couples have a vested interest in the fate of their embryos; and (c) indications show that families created from this procedure will encounter many of the same psychological, sociological, and ethical issues that individuals in the traditional adoption triad meet, we believe that the term *embryo adoption* is actually the most accurate language to describe the specific practice we are interested in here.

These are tentative arguments and rejoinders certainly are possible. As we said, naming certain sorts of heterologous embryo transfers *embryo adoption* does not settle debates about its moral permissibility or the subsequent ethical implications. Let us then, as promised, describe the rationale for and the general arguments of the essays we have brought together here.

## 4 Engaging the Terms of Moral Inquiry into Embryo Adoption

Since embryo adoption is relatively novel in practice, with medical, social, political, legal, economic, and psychological implications that have yet to be clarified, the available literature on it is fairly recent and understandably insular in focus. The literature in general reveals that philosophers are writing for philosophers, moral theologians are writing for moral theologians, lawyers for lawyers, and clinicians for clinicians. Symptomatic of the disparate and parochial character of the literature to date are the limited terms it sets for moral reflection on the issue. Medical and scientific approaches treat this practice as one among several options in the industry of assisted reproduction. Legal analyses treat it in terms of property and privacy rights. These approaches forge intramural lines of argument that remain disengaged with other disciplinary aspects of embryo adoption (if only, but of course not primarily, because they are physically and disciplinarily separated) and prohibit a truly comprehensive analysis of the practice.

While Catholic moral theology offers the most sustained *ethical* assessments of embryo donation, like the medical, scientific, and legal treatments of embryo adoption, the discussion has transpired mostly in a disjointed fashion, with all but one scholarly treatment located in various journals (see, e.g., Berkman, 2003; Smith, 1995; Surtees, 1996; Tonti-Filippini, 2003). To our knowledge, there has been but one scholarly conference on the matter, held in the USA, the proceedings of which were recently published (Berg & Furton, 2006). In addition, Catholic arguments thus far have operated on somewhat limited terms. For example, the primary focus has been on identifying the “moral object” of the act of transferring a genetically unrelated embryo into a married woman’s uterus, and whether this object offends the nuptial significance of her body and the marital union she shares with her husband. In Catholic moral tradition a moral action is sometimes analyzed as consisting of an object (what the agent chooses when he or she chooses to act), the agent’s intention, and the circumstances surrounding the action.<sup>16</sup> Other approaches in Catholic moral theology forge substantive ethical inquiry not by looking to an account of “the moral act” but to Scripture, virtue ethics, or notions of discipleship or responsibility. Given the nature of general and specifically Catholic discussions of embryo adoption, we see four reasons why our collection of essays yields a unique and essential contribution to Catholic and wider reflection on the practice and to related moral issues.

---

<sup>16</sup>The notion of the “object” and its relation to intention and circumstances is debated in Catholic moral theology, figuring largely in differences between Pope John Paul II and revisionists like Josef Fuchs or Richard McCormick. See John Paul II (1993). *Veritatis Splendor* [Online]. Available: [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/encyclicals/documents/hf\\_jp-ii\\_enc\\_06081993\\_veritatis-splendor\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_06081993_veritatis-splendor_en.html); J. Wilkins (Ed.) (1994). *Considering Veritatis Splendor*. Cleveland, OH: Pilgrim.



First, we provide comprehensive Catholic moral theological consideration of embryo adoption. Essays in this volume assess embryo adoption in light of Catholic sexual ethics and in terms of Catholic social teachings. The question of embryo adoption's moral permissibility initially appears to be best addressed within Catholic sexual ethics. Indeed, several essays in this volume represent and advance the best of the arguments for and against the practice from within Catholic sexual ethics. It is easy to see why Catholic sexual ethics leads to contrary moral conclusions about embryo adoption. On the one hand, Catholic tradition insists that human life begins at conception, and hence that frozen human embryos, just as those that are in utero, are irreducibly valuable and enjoy a right to life. Moreover, the tradition affirms the goodness of adoption as a response to the unfortunate disruption of genetic and social parenthood. Embryo adoption offers the prospect of life to cryopreserved embryos, albeit through a process that separates genetic and gestational parenthood.

On the other hand, Catholic sexual ethics restricts morally permissible human procreation to conception through sexual intercourse in the confines of heterosexual marriage. Thus some argue that a woman ought not be "impregnated with a child from outside of marriage, however altruistic the purpose and however desperate the plight of those to whom she wishes to give herself"; precisely because her generative capacity *belongs to the marital union* it may not be given outside marriage (Tonti-Filippini, 2003, p. 124). Versions of this later argument against embryo adoption are compellingly put forth in the chapters by Catherine Althaus and Tadeusz Pacholczyk. Althaus' work carefully and thoroughly considers the issue of the moral object of HET and critiques the practice by appealing to a theology of the body. She describes the nuptial stages of life and develops the significance of maternity and paternity in relation to pregnancy. She also considers the rights of children to be born as a result of conjugal union. Pacholczyk appeals to the respective procreative powers of men and women and to the status of procreation in relation to the conjugal act. He also helpfully considers the difficult question of what morally licit alternatives to embryo adoption might be available. Arguing from the shared worldview of Catholic sexual ethics, Christopher Tollefsen provides an equally well-crafted response to arguments like those of Althaus and Pacholczyk. Tollefsen takes up claims that pregnancy is part of the conjugal act. In particular he challenges the claim that making/becoming pregnant is an act men/women can perform. He further considers how men and women become parents in adoption and argues that embryo adoption is *not* inherently wrong.

However, even if embryo adoption is not *inherently* wrong, it does not follow that one morally may embark on an embryo adoption. Since it is tied so closely to IVF, additional ethical considerations may tell against the practice. Some have argued that embryo adoption is morally wrong because it involves cooperation with the evil of IVF. Others say that embryo adoption is sufficiently morally different from IVF because it does not involve the *creation* of embryos (as IVF does) but responds to *already existing* embryos whose genetic parents are unable or unwilling to gestate them. But they, too, need to reckon with the possibility that embryo adoption may cause scandal and could have other unhappy consequences. For example,

sanctioning embryo adoption could lead others to think that IVF may be acceptable or might encourage the production of even greater numbers of surplus embryos. For these reasons we include a chapter by Brandon Brown and Jason Eberl, which carefully analyzes embryo adoption according to principles of cooperation, and skillfully engages and advances discussions of its complicity with IVF and its likelihood for causing scandal.

While it is necessary and valuable morally to evaluate embryo adoption with reference to Catholic sexual ethics and in terms of cooperation with the evils associated with ART, the prevailing arguments appear to neglect relevant and promising resources within the intellectual heritage of the Church. In particular we are interested in how Catholic social teaching can illuminate analyses of embryo adoption. As Pope John Paul II said in *Centesimus Annus* (1991), Catholic social teaching is “genuine doctrine” (no. 5). The United States Bishops’ Task Force on Catholic Social Teaching and Catholic Education (2007) bemoaned prevalent ignorance and neglect of the Church’s social teaching and pointed out that these teachings are not “tangential or optional,” but “a central and essential element of our faith.” Pope Benedict XVI’s (2005) first encyclical, *Deus Caritas Est* (God is Love) proclaims love of neighbor as a duty incumbent upon Catholic individuals and the ecclesial community as a whole. The latter takes up this duty through its works of charity and by awakening consciences and engaging wills in readiness to promote justice and the common good. Since embryo adoption entails economic, political, legal, psychological, and social ramifications, the riches of Catholic social teaching promise to enhance moral consideration of the practice.

We wish to put the matter even more sharply, however. The human person is a thoroughly social, indeed relational creature. Decisions regarding human life, reproduction, and biotechnology – decisions such as those that lead to the existence of surplus embryos, decisions to preserve them indefinitely, dispose of them, subject them to research and experimentation, or, that is, transfer, and gestate them – all have social contexts and social as well as natural consequences. Individuals’ ethical evaluations of these decisions are shaped as well by attitudes regarding the use of technology, the character of family life, and the role of women. Therefore, by using relevant theological and moral resources in Catholic social teaching we appeal to a tradition that seeks to enrich the positive aspects of our sociality and provide critical and prophetic perspectives on various threats to human flourishing. Catholic social teaching may advance moral inquiry into embryo adoption. Several chapters in our volume draw explicitly upon Catholic social teachings, such as the chapter by William Stempsey that provides new direction for analysis by considering embryo adoption in relation to the mission of Catholic hospitals and in light of principles of justice and stewardship; Darlene Fozard Weaver’s chapter, which evaluates embryo adoption with reference to the common good; John Berkman and Kristen Carey’s considered and imaginative chapter on what a Catholic embryo adoption program might look like; and Sarah-Vaughan Brakman’s chapter on the role of stewardship as a warrant for the obligation to give excess embryos to another family and to welcome embryos as part of one’s family.

The second distinctive feature of our volume is that it enlarges the Catholic conversation about embryo adoption by including fresh voices and disciplinary perspectives through considering proper philosophical, feminist, legal, and Protestant assessments. We invited contributors to engage and assess the Catholic conversation because in our view, our colleagues (Catholic and non-Catholic) may “show us to ourselves” by reflecting back to us their understanding of our moral theology. The chapter by Paul Lauritzen incisively observes that the intramural character of embryo adoption debates thus far amounts to a forfeiture of opportunities to render Catholic insights into embryo adoption intelligible to a wider audience. Moreover, the rhetorical flourishes that sometimes characterize Catholic discussions of human embryos can fuel misunderstanding of and dismissive reactions to ward Catholic wisdom regarding respect for human life. And yet, embryo adoption intersects with and bears upon so many moral issues; it has potentially explosive implications for the way we think ethically about kinship, marriage, gender, reproduction, and adoption. In our judgment, the work in this volume enriches conversations in mainstream bioethics through its substantive accounts of human nature and sexuality and its use of moral principles that transcend the usual appeals to individualism and autonomy.

Other chapters in our volume forward interdisciplinary treatments of embryo adoption and demonstrate through example how reason and faith are complementary avenues to truth. Mary Mahowald deftly demonstrates this in her chapter. She first considers embryo adoption in light of a principles-based ethics centered on autonomy and equality, casuistically (in relation to analogous cases), then through a Catholic philosophical analysis shaped by feminist concerns. Eric Gregory provides a Protestant perspective on Catholic debates about embryo adoption and on embryo adoption itself. Curiously, although embryo adoption receives warm support among some Protestants, there is a dearth of Protestant analyses of the practice. Gregory uses an ethics of responsibility developed by H. Richard Niebuhr and a theological account of parenthood offered by Karl Barth to approach embryo adoption in a decisively theocentric fashion. Weaver’s chapter endeavors a substantive theological approach to embryo adoption as well, and considers the practice in light of feminist concerns.

The third distinctive feature of our book is its attention to experience. The natural law tradition that informs so much of Catholic moral theology respects experience as a source of moral insight. In natural law ethics moral actions are right or wrong, good or evil not on the basis of law or authority, but by virtue of their order to or violation of the human and common good. Hence, we may learn from critical reflection on experience what sorts of actions comport with the human and common good and what sorts do not. To this end, we include brief reflections on embryo adoption offered by a Catholic couple who recently welcomed in birth a son whom they first welcomed in adoption when he was still an embryo. We were very pleased to have their contributions because Catholic analyses of embryo adoption thus far neglect the experience of those involved in embryo adoption. The experience reported by our embryo adoptive parents, of course, is not universal, nor is it immune from critical engagement. But simply including such perspectives in an ethical analysis of

embryo adoption is important. Those of us – we editors included – who have been discussing the practice would do well to listen more than we have thus far to persons whose lives are intimately affected by embryo adoption.

We also include an essay by Dr Jeffrey Keenan, director of the National Embryo Donation Center, whose chapter clearly describes the rationale for and operating procedures of an embryo transfer program. We invited his contribution because we wished to provide our readers with a sense of how embryo adoption currently takes place both as a medical practice and as a practice modeled after traditional infant adoption, informed by a Christian perspective.

Fourth, our book ventures beyond arguments concerning embryo adoption's moral permissibility to consider moral issues and consequences of the practice of embryo adoption. Embryo adoption is a present reality, both as one among many fertility treatments that couples may pursue in the world of ART and also as a particular response to the problem of surplus embryos by members of the greater Christian community who hold pro-life views. We recognize that embryo adoption will continue to be offered in the world of fertility medicine, whether or not it is ultimately approved by the Roman Catholic Church. Indeed, our consideration here is meant to reflect the concern expressed in *Donum Vitae* that embryos be treated with respect. In short, whether or not the Church sanctions embryo adoption, it is important for Catholic moral theologians, philosophers, bioethicists, lawyers, and policy makers to bring their expertise to bear in shaping embryo adoption policy so that the practice proceeds as ethically as possible. Available guidelines posed in the medical community clearly are inadequate to this task. The American Society for Reproductive Medicine (ASRM), the professional society of fertility physicians, has issued guidelines and supposed "minimum" standards for embryo donation and guidelines for the psychological dimensions of the practice for both genetic and recipient couples (ASRM, September 2004, S8 and S20–S21). These guidelines appear to treat embryo donation in similar fashion to gamete donations. They fail to address significant issues, however, including genetic parents' participation in choosing recipient couples, physician/clinic control of embryo disposition, the rights of resultant children, physician responsibility regarding disclosure, and recipient couples' control over which embryos they receive.

Catholic ethical treatments of embryo adoption to date also have failed to address how current procedures or practices can be reformed so that that practice proceeds in the ethically best fashion possible. We believe this is crucial to a Catholic response to the world in which we live. Toward this end, we include Cason Cheeley's chapter on the legal status of embryo adoption, which skillfully situates embryo adoption in the American legal context and reviews the legal status of embryo adoption in the UK, Australia, Italy, and Germany. Berkman and Carey's essay on a Catholic embryo adoption agency then provides a possible alternative to current practices. Finally, we have a chapter by Christopher Kaczor which morally examines the possibility of gestating surplus embryos in artificial wombs; as he does so he capably returns the reader to arguments about embryo adoption's intrinsic moral character, while inviting the reader to look into a future technology that may well be closer than we think.

To conclude, our aim in this introduction has been to orient our readers to the nature and scope of our volume and to share our conception of, rationale behind, and expectations for this collection as a contribution to moral reflection on embryo adoption. The essays included here offer the best and most up-to-date analyses of embryo adoption in relation to Catholic teaching on sex, marriage, and family, and issues of scandal and cooperation with evil. They also initiate new lines of reflection on the practice and engage heretofore neglected resources in Catholic tradition. Taken together they vividly display the vibrancy and richness of Catholic moral tradition, and our felicitous need for conversation partners of diverse minds and talents in the search for truthful moral insight.

**Acknowledgements** First and foremost, we thank our authors. We are simply delighted that our invitations and call for papers brought together such a stellar group of scholars, and we are grateful for the rich, innovative, and thoughtful work they have done. We found it a pleasure and an honor to work with all of the authors and we appreciate their timely and careful responses to our many editorial queries and requests. We thank them for their extensive work and for their commitment to our project. We are proud of the very fine work represented in each and every chapter.

We also thank Christopher O. Tollefsen, the series editor for *Catholic Studies and Bioethics*, and felicitously, one of our authors. We are grateful to Chris for his ready enthusiasm for the project from its inception and for his helpful guidance and assistance throughout the whole of the endeavor. We are likewise grateful to Fritz Schmuhl and the editorial staff at Springer, especially Lisa Rasmussen, who led us through the production process with care and courtesy. We also wish to acknowledge the anonymous reviewers whose comments and suggestions were exceedingly helpful to us and to our authors during the revision process.

Our institutional home, Villanova University, and our many colleagues there deserve our thanks. We met at Villanova through the auspices of the Ethics Program, an interdisciplinary program between the Philosophy Department and the Department for Theology and Religious Studies. Mark Doorley and Brett Wilmot of the Ethics Program supported our work and created opportunities for us to share it with the Villanova community. Mary Quilter generously assisted us with our invitations to contributors and the call for papers. Elise Italiano, a graduate student in Theology, helped us with the index. We also must thank Joseph Betz, the former director of the Graduate Liberal Studies Program, for inviting us to team teach a graduate course in bioethics. It was during the experience of teaching material on embryo adoption that we conceived the idea for this book. We thank especially John Johannes, the Academic Vice President for Villanova University and Reverend Kail Ellis, O.S.A. The Dean of the College of Arts and Sciences for Villanova University, as well as our respective departmental colleagues who supported leaves during which we each undertook research and writing for the book. We also gratefully acknowledge the receipt of a Villanova University 2006 Summer Research Fellowship and a Summer Research Grant. The Summer Research Fellowship helped to create the time we needed to work out our rationale for the volume and complete some of our writing for it. The Summer Research Grant allowed us to hire a first rate research assistant, Kristen N. Carey, whose diligent and careful editorial assistance was invaluable to us. As her former professors, we also note with pride the chapter she co-authored with John Berkman for this book.

Sarah-Vaughan Brakman wishes to thank Robert P. George, Bradford Wilson, and The James Madison Program in American Ideals and Institutions in the Department of Politics, Princeton University for the award of a Visiting Fellowship, during which time she was able to complete and revise her chapter and work on details of the final preparation of the manuscript. Darlene Fozard Weaver wishes to thank the Center for Theological Inquiry in Princeton for the support she received as a Member-in-Residence. She did some of the early work for this volume and for her chapter while there on a sabbatical.

Finally, we thank one another. This volume is the fruit of a truly collaborative effort forged through countless hours of conversation and shared writing. We learned from and with one

another throughout the process. We each relied upon the other's insight, expertise, leadership, diligence, understanding, patience, and good humor. Rarely do scholars find a colleague with whom they share similar interests and passions, common intellectual and moral values, as well as distinct yet complementary training and expertise. To discover all these qualities in someone whom you also like and respect and enjoy as a person, well, that is even rarer. Being colleagues is a joy and a privilege. Being friends is all the more so.

## References

- The American Society for Reproductive Medicine (ASRM) (2004). 'Guidelines for cryopreserved embryo donation,' *Fertility and Sterility*, 82 (supplement 1), S16–S17; S20–S21.
- Arekapudi, S. (2002). *Adopting the Unborn* [Online]. Available: <http://www.ama-assn.org/ama/pub/category/9153.html>.
- Benedict XVI (2005). *Deus Caritas Est* [Online]. Available: [http://www.vatican.va/holy\\_father/benedict\\_xvi/encyclicals/documents/hf\\_ben-xvi\\_enc\\_20051225\\_deus-caritas-est\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/encyclicals/documents/hf_ben-xvi_enc_20051225_deus-caritas-est_en.html).
- Berg, T.V. & Furton, E.J. (2006). *Human Embryo Adoption: Biotechnology, Marriage, and the Right to Life*. Philadelphia, PA; Thornwood, NY: The National Catholic Bioethics Center and the Westchester Institute for Ethics and the Human Person.
- Berkman, J. (2003). 'Gestating the embryos of others,' *National Catholic Bioethics Quarterly*, 3, 309–329.
- Berkman, J. (2003). 'Colloquy,' *National Catholic Bioethics Quarterly*, 4, 12–13.
- Brakman, S.V. (2007). 'Paradigms, practices and politics: Ethics and the language of human embryo transfer/donation/rescue/adoption,' in M.J. Cherry & A.S. Iltis (Eds.), *Pluralistic Casuistry: Moral Arguments, Economic Realities, and Political Theory, Essays in Honor of Baruch A. Brody* (191–210). Dordrecht, The Netherlands: Springer.
- Brakman, S.V. (2005). 'Dialogue: The politics of embryo transfer,' *The Lahey Clinic Medical Ethics Journal*, 12, 10–11.
- Brakman, S.V. (2005). 'Ethics and embryo adoption,' *The Lahey Clinic Medical Ethics Journal*, 12, 1–2.
- Burton, P.J. & Sanders, K. (2004). 'Patient attitudes to donation of embryos for research in Western Australia,' *Medical Journal of Australia*, 180(11), 559–561.
- Caplan, A. (2003). *The Problem with "Embryo Adoption": Why is the Government Giving Money to "Snowflakes?"*, June 24 [Online]. Available: <http://www.msnbc.com/id/3076556/print/1/displaymode/1098/>.
- Cedars, M.I. (1998). 'Embryo cryopreservation,' *Seminars in Reproductive Endocrinology*, 16(3), 183–195.
- Centers for Disease Control and Prevention. (2006). *2004 Assisted Reproductive Technology Success Rates: National Summary and Fertility Clinic Reports* [Online]. Available: <http://ftp.cdc.gov/pub/Publications/art/2004ART508.pdf>.
- Congregation for the Doctrine of the Faith (1987). *Donum Vitae (Instruction on Respect for Human Life in Its Origin and on the Dignity of Procreation: Replies to Certain Questions of the Day)* [Online]. Available: [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_19870222\\_respect-for-human-life\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19870222_respect-for-human-life_en.html).
- De Lacey, S. (2005). 'Parent identity and "virtual" children: Why patients discard rather than donate unused embryos,' *Human Reproduction*, 20, 1661–1669.
- De los Santos, M.J., Mercader, A., Galan, A., Albert, C., Romero, J.L., & Pellicer, A. (2003). 'Implantation rates after two, three, or five days of embryo culture,' *Placenta*, 24(Supplement B), S13–S19.
- Demartis, F. (1998). 'Mass pre-embryo adoption,' *Cambridge Quarterly of Healthcare Ethics*, 7, 101–103.

- Eisenberg, V.H. & Schenker, J.G. (1998). 'Pre-embryo donation: Ethical and legal aspects,' *International Journal of Gynaecology and Obstetrics*, 60, 51–57.
- Embryo Adoption Awareness Campaign (2003). *Practical Usage of the Terms "Adoption" and "Donation"* [Online]. Available: <http://www.embryoadooption.org/GenPracticalUsage.asp>.
- Eydoux, P., Thepot, F., Fellmann, F., Francannet, C., Simon-Bouy, B., Jouannet, P., Bresson, J. L., & Sifroi, J.P. (2004). 'How can the genetic risks of embryo donation be minimized? Proposed guidelines of the French Federation of CECOS (Centre d'Etude et de Conservation des Oeufs et du Sperme),' *Human Reproduction*, 19, 1685–1688.
- Faggioni, M.P. (1996). 'The question of frozen embryos,' *L'Osservatore Romano* [English] 34(1454), 4–5.
- Grisez, G. (1997). 'Should a woman try to bear her dead sister's embryo?' in *The Way of the Lord Jesus, Vol. 3, Difficult Moral Questions*. Quincy, IL: Franciscan Press.
- Hoffman, D.I., Zellman, G.L., Fair, C.C., Mayer, J.F., Zeitz, J.G., Gibbons, W.E., & Turner, T.G. (2003). 'Cryopreserved embryos in the United States and their availability for research,' *Fertility and Sterility*, 79, 1063–1069.
- Hurlbut, W.B. (Spring, 2005). 'Altered nuclear transfer as a morally acceptable means for the procurement of human embryonic stem cells,' *Perspectives in Biology and Medicine*, 48(2), 211–228.
- John Paul II (1991). *Centesimus Annus* [Online]. Available: [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/encyclicals/documents/hf\\_jp-ii\\_enc\\_01051991\\_centesimus-annus\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_01051991_centesimus-annus_en.html).
- John Paul II (1993). *Veritatis Splendor* [Online]. Available: [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/encyclicals/documents/hf\\_jp-ii\\_enc\\_06081993\\_veritatis-splendor\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_06081993_veritatis-splendor_en.html).
- Kingsberg, S.A., Applegarth, L.D., & Janata, J.W. (2000). 'Embryo donation programs and policies in North America: Survey results and implications for health and mental health professionals,' *Fertility and Sterility*, 73(2), 215–220.
- Laruelle, C. & Englert, Y. (1995). 'Psychological study of in vitro fertilization-embryo transfer participants' attitudes toward the destiny of their supernumerary embryos,' *Fertility and Sterility*, 63, 1047–1050.
- Lee, J. & Yap, C. (2003). 'Embryo donation: A review,' *Acta Obstetrica et Gynecologica Scandinavica*, 82, 991–996.
- Masek, L. (2006). 'A contralife argument against altered nuclear transfer,' *National Catholic Bioethics Quarterly*, 6, 235–240.
- May, W.E. (2006). 'The object of the acting woman in embryo rescue,' in T.V. Berg & E.J. Furton (Eds.), *Human Embryo Adoption: Biotechnology, Marriage and the Right to Life* (pp. 135–163). Philadelphia, PA; Thornwood, NY: The National Catholic Bioethics Center and the Westchester Institute for Ethics & the Human Person.
- Nachtigall, R.D., Becker, G., Friese, C., Butler, A., & MacDougall, K. (2005). 'Parents' conceptualization of their frozen embryos complicates the disposition decision,' *Fertility and Sterility*, 84, 431–434.
- Nightlight Adoptions: Snowflake Program* (2001). [Online]. Available: <http://www.nightlight.org/snowflakeadoption.htm>.
- Pontifical Academy for Life (2004). *Final Communiqué on the Dignity of Human Procreation and Reproductive Technologies. Anthropological and Ethical Aspects* [Online]. Available: [http://www.vatican.va/roman\\_curia/pontifical\\_academies/acdlife/documents/rc\\_pont-acd-life\\_doc\\_20040316\\_x-gen-assembly-final\\_en.html](http://www.vatican.va/roman_curia/pontifical_academies/acdlife/documents/rc_pont-acd-life_doc_20040316_x-gen-assembly-final_en.html).
- Robertson, J.A. (1995). 'Ethical and legal issues in human embryo donation,' *Fertility and Sterility*, 64, 885–894.
- Smith, W.B. (1995). "Rescue the frozen?" *Homiletic and Pastoral Review*, 96, 72.
- The Society for Assisted Reproductive Technology* (2005). [Online]. Available: [http://www.sartconsonline.com/rptCSR\\_PublicMultYear.aspx?ClinicPKID=0](http://www.sartconsonline.com/rptCSR_PublicMultYear.aspx?ClinicPKID=0).
- Stepoe, P.C. & Edwards, R.G. (1978). 'Birth after the reimplantation of a human embryo,' *Lancet*, 2(8085), 366.
- Surtees, G. (1996). 'Adoption of a frozen embryo,' *Homiletic and Pastoral Review*, 96, 8–9.

- Tonti-Filippini, N. (2003). 'The embryo rescue debate: Impregnating women, ectogenesis, and restoration from suspended animation,' *National Catholic Bioethics Quarterly*, 3, 111–137.
- Trounson, A. & Mohr, L. (1983). 'Human pregnancy following cryopreservation, thawing and transfer of an eight-cell embryo,' *Nature*, 305(5936), 707–709.
- U.S. Senate Committee on Appropriations (2001). *Press Release for November 6, 2001* [Online]. Available: <http://www.appropriations.senate.gov/releases/record.cfm?id=179516>; A copy of the grant announcement can be found at *The Catalog of Federal Domestic Assistance* [Online]. Available: [http://12.46.245.173/pls/portal30/CATALOG.PROGRAM\\_TEXT\\_RPT.SHOW?p\\_arg](http://12.46.245.173/pls/portal30/CATALOG.PROGRAM_TEXT_RPT.SHOW?p_arg).
- Utley, T. (1996). 'Time runs out for 3,000 embryos as last appeals fail,' *Daily Telegraph*, August 1, London.
- Weaver, D.F. (forthcoming). 'Embryo adoption: Expanding the terms of the debate,' in L. Hogan (Ed.), *Catholic Theological Ethics in the World Church*. Orbis.
- Wilkins, J. (Ed.) (1994). *Considering Veritatis Splendor*. Cleveland, OH: Pilgrim.



# Heterologous Embryo Transfer: Metaphor and Morality

Reverend William E. Stempsey, S.J.

## 1 Introduction

Discussion of the ethics of Heterologous Embryo Transfer (HET) has been framed in terms of several images: “rescue” and “adoption” of embryos, and “surrogacy.” Moral arguments using such language often attempt, in the manner of traditional casuistry, to liken the implantation of embryos to other “paradigm cases” of rescue and adoption of children or surrogate motherhood contracts. Even though the arguments that have been presented are much more complex, and not just simplistic comparisons of cases, such imagery has importantly influenced the way the question has been analyzed.

Here, I will attempt to “unload” the sometimes loaded ethical question of HET by analyzing the images of rescue, adoption, and surrogacy. This is important because framing the question of the morality of embryo transfer as a rescue or adoption or surrogacy can end up begging the question. Certainly, rescue and adoption are generally good things. Surrogate motherhood, at least in the Catholic tradition, is not seen as a good thing. When such images are used in the case of HET, they can shape moral analysis one way or the other even before the analysis is begun. Furthermore, framing the question by using such terms can limit moral analysis by focusing attention away from other important moral issues. Paul Lauritzen makes a similar point in this volume, arguing that the Catholic debate about HET has been “idiosyncratic and (religiously) intramural in a way that obscures important insights that the tradition could offer to the debate, if it were framed differently.” (p. 162) Although I want to remain solidly within the Catholic realm, I agree that it is necessary to go beyond the images of rescue, adoption, and surrogacy to assess adequately the ethics of the practice of HET. In particular, some of the medical and technical challenges of HET raise important moral issues about justice and the mission of Catholic health care facilities.

To begin, a look at the concepts of analogy and metaphor will be helpful as background to show how some of the major arguments for and against HET have been shaped by particular metaphors. I will then argue that medical considerations and important elements of the Catholic mission in health care tell against HET. Even if the practice is not inherently wrong, it raises such moral problems that we

should not endorse embryo transfer in Catholic hospitals. Setting up HET programs in Catholic hospitals would be sanctioning a questionable solution to a moral conundrum that could jeopardize other facets of the hospitals' stated mission.

## 2 Analogy, Metaphor, and the Ethics of Heterologous Embryo Transfer

Some have addressed the morality of HET in terms of the "rescue" of embryos (Smith, 1995; Grisez, 1999) while others have termed the practice "adoption" (Watt, 1999; Berkman, 2002). The embryos in question have even been referred to as "orphan" (Geach, 1999). Such terms carry a range of connotations that may or may not appropriately describe HET. Most of these authors realize the limitations of such terms, putting them in quotation marks. Nonetheless, I prefer to follow Tonti-Filippini (2003) and Onder (2005) in referring to the practice as "heterologous embryo transfer," which I take to be the most generally descriptive and least question-begging term.

Those who talk about surrogacy, rescue, and adoption explicitly or implicitly, acknowledge that they are using analogy to describe a novel practice. The arguments then rely on showing how HET is like surrogacy, adoption, or rescue. Analogy has played an important role in the long-standing moral tradition of casuistry, which analyzes complex and uncertain cases in terms of simpler and morally certain "paradigm cases." Consequences for the uncertain case are then drawn by analogy (Jonsen & Toulmin, 1988, pp. 251–252).

Relying on St. Thomas Aquinas's use of analogy, George Klubertanz (1960, pp. 116–118) has analyzed the concept of analogy. For our purposes, it is important to realize that terms are called univocal if they always have the same meaning or multivocal if they have several meanings. For example, "bank" might mean either a financial institution or the side of a river. Analogous terms cannot have precise definitions as univocal terms can, but rather admit only of vague, indefinite definitions. An analogous term is not meant to be used "by and in itself." Rather, it "molds itself to the subject." Hence, in analogy we are dealing with multivocal terms, which by nature are indefinite (Klubertanz, 1960, pp. 118–120). It should be evident that HET involves medical and surgical procedures, and so is quite unlike our ordinary understanding of adoption or rescue, or sometimes even surrogacy.

The way that such terms as "adoption," "rescue," and "surrogacy" are used in the context of HET, however, goes beyond the way multivocal terms are used in analogy. Moral arguments most often use these terms more as metaphors; they claim that HET *is* a rescue or an adoption or the use of a surrogate mother; see the chapters by Christopher Tollefsen (this volume) and Darlene Fozard Weaver (this volume), which develop accounts of adoption. Philosophers have analyzed metaphor in several different ways, but one is particularly telling because it illustrates how metaphor can shape moral discourse. Robert Boyle, S.J. (1954, pp. 271–272) uses the example, "Grace washes my soul," in which a water metaphor is being used for

grace. He argues that when we use a metaphor such as this, grace takes on both its own proper spiritual nature and the cleansing nature of water. The mind gives a new concept, washing, to grace (Boyle, 1954, pp. 273–275). Boyle's conclusion from this analysis of metaphor enlightens our present analysis of HET. Because grace is water in the mind of the speaker, metaphor "takes for granted what it states." If one does not already know the focus of the metaphor, the focus will never be revealed by the metaphor itself (Boyle, 1954, p. 272, no. 7). The lesson here is that caution is warranted in the use of metaphor in moral judgments, for the metaphor chosen is likely to presume the answer to the moral conundrum under consideration.

Douglas Berggren (1962, p. 243) has argued that the use of metaphor both transforms and preserves not only the "subsidiary" subject but also the "primary" subject. To use his example, calling life a play or dream not only gives a new interpretation to life, but also gives new significance to plays and dreams. The most serious danger of using metaphor, then, is that the metaphor may be transformed into a myth, which Berggren (1962, p. 244) defines as "a believed absurdity, believed because the absurdity goes unrecognized." As Max Black (1962, p. 37) has argued, it is sometimes more illuminating to say that metaphor "creates" the similarity being described than to say that it merely "formulates" a similarity that already exists. In calling a man a wolf, the metaphor "organizes" our view of the man (Black, 1962, p. 41). But it also organizes our view of the wolf. Black concludes: "If to call a man a wolf is to put him in a special light, we must not forget that the metaphor makes the wolf seem more human than he otherwise would" (1962, p. 44).

To call HET an adoption, a rescue, or an instance of surrogacy, then, is to employ a metaphor and to influence any further moral analysis of the practice. It is to "organize" not only our view of HET, but also our views of the moral nature of adoption, rescue, and surrogacy.

### 3 Surrogacy

At first glance, surrogacy seems an apt metaphor for HET, as it draws primary attention to the process of implantation of the embryo and the resulting pregnancy. *Donum Vitae* (Congregation for the Doctrine of the Faith [CDF], 1987, II.A.3) explicitly condemns surrogacy as "an objective failure to meet the obligations of maternal love, of conjugal fidelity and of responsible motherhood." Furthermore, "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," setting up a division within families of "physical, psychological and moral elements" (CDF, 1987, II.A.3). Hence, it focuses on the maternal–fetal relationship. What appears to tell against the morality of surrogacy is the agreement to surrender the child at birth. This is what John Berkman (2003, pp. 316–317) calls the "contractual" view of surrogacy. He rightly takes this as the most plausible interpretation of what is condemned in *Donum Vitae*. Germain Grisez (1997, p. 241) also interprets

surrogacy along the lines of the “contractual” view. He argues, however, that if a woman were to have an embryo implanted with the intention of keeping the baby and raising it herself, such an action would not constitute surrogacy and hence would not be wrong on those grounds.

Even if surrogacy is wrong, then, the question of whether HET is surrogacy remains. Grisez’s interpretation seems more plausible with respect to HET because a fundamental facet of surrogacy is carrying an infant to term in order to give the child up to the one who contracts the surrogacy. Hence, not all cases of HET involve surrogacy in the most commonly understood and morally problematic sense. In the end, using the metaphor of surrogacy will not definitively tell against the morality of HET. But notice that the use of this metaphor has focused discussion a way from the saving of the embryo and toward the proper relationship between pregnancy and child-rearing.

## 4 Rescue

The most relevant definition of “rescue” from the Oxford English Dictionary is: “to deliver or save (a person or thing) *from* some evil or harm.” The rescue metaphor for HET draws primary attention to the plight of the embryo and a way from the mother–child relationship. Again, however, we should investigate the ways in which this usage tempts us to reinterpret both rescue and HET.

Grisez (1997, p. 240) characterizes HET as a woman’s effort “to try to save the embryo’s life by receiving this tiny individual in her womb and nurturing him or her until birth.” He argues that this is a good end, and that the means chosen is not intrinsically wrong as long as the woman makes it clear that she is not condoning the process of IVF through which the embryo came to be. Grisez is also careful to note that there is no moral *obligation* for such a rescue. Unlike a lifeguard, who has a role-specific obligation to rescue, a woman contemplating embryo “rescue” is more like a passerby who notices a drowning child and considers whether to attempt a rescue. The obligation to undertake such a rescue depends on the risks to the rescuer, the probability of success, and any particular responsibilities to others. Such risks, responsibilities, and the low probability of successfully gestating a frozen embryo may provide good reasons not to undertake the rescue (Grisez, 1997, pp. 243–244).

A further consideration is raised by Berkman (2003, pp. 325–326). He argues that Grisez’s characterization of HET as a rescue forces Grisez to offer an alternative moral characterization of the relationship between the woman and the embryo. Grisez chooses “foster parent,” but as Berkman realizes, that analogy is itself quite strained and even weakens the notion of rescue. A foster parent has long-term obligations that a rescuer does not, and a rescuer undertakes risks that are not demanded of a foster parent.

The metaphor of rescue further strains our ordinary understanding of rescue. HET is a medical procedure and “rescue” is not usually applied to the work of medicine. Firefighters rescue people from burning buildings, but physicians, even when the y

save lives by cardio-pulmonary resuscitation, are not said to rescue their patients. They *save* their patients, perhaps, but they do not *rescue* them. To call HET a rescue is to call a medical-surgical procedure a rescue, and thus to use a metaphor to reinterpret our understanding not only of HET, but also of rescue, and even of medical practice.

## 5 Adoption

Sarah-Vaughan Brakman (2007) has considered several arguments that tell for and against using the term “adoption” for HET. She concludes that “adoption” best fits the practice. I am concerned, however, that using this term leads to a premature closure of the moral question.

Helen Watt (1999, p. 347) argues that breaking the ideal continuum between prenatal and postnatal nurture is sometimes morally justified. Just as postnatal adoption is not ideal, but is sometimes a good response to a non-ideal situation, so is prenatal adoption sometimes justified. But unlike Grisez, who would permit a woman to “rescue” the embryo, bring it to term, and then give the child up for adoption (in the conventional sense), Watt (1999, p. 348) would permit HET only if the woman intends truly to adopt the child – that is, to raise the child herself. As Berkman (2003, pp. 328–329) recognizes, our understanding of the nature of what it means to be a mother is at stake here, and he encourages further thought about the priority we seem to give to genetic mothers over gestational mothers. E. Christian Brugger (2005, pp. 109–110) likewise advocates an adoption analogy, but one that does not require the permanent adoption of the transferred embryo at birth. He makes several analogies with the rescue of children to advocate the notion of what he calls “emergency adoptive parents.” This, however, seems more like rescue than adoption. Once again, the use of metaphor is forcing us to reexamine the meaning of several concepts.

To call HET an adoption misses some clear differences between the two practices and risks begging the moral question. It is true that “adoption” is used to signify the permanent assumption of care for all sorts of things, dogs and cats, for example. But the risk in using “adoption” in the case of HET is that if we see the adoption of a needy child as good, then assuming that the embryo is human life can lead to the premature conclusion that HET is just like the adoption of a needy child. But that is precisely the moral question to be decided. This is not to deny the inherent human dignity of the embryo. The embryo is a unique human life, having a “sacred and inviolable nature” (Benedict XVI, 2006). But adoption of a child is quite different from adoption of a human embryo. Having an embryo implanted is to become pregnant and to become pregnant is not the same as rearing a child; prenatal nurturing is not postnatal nurturing. The pregnant woman does not have to worry about a fetus running out into traffic. To use adoption as a metaphor for HET is to reinterpret the commonly understood meaning of adoption, embryo implantation, pregnancy, and child-rearing.

All this is to point out the ways in which characterizing HET by certain metaphors influences discussion about the morality of HET. It seems that most authors are coming to realize this, for more recent discussion has focused not so much on the proper analogy or metaphor to understand HET, but rather on the object of the act.

## 6 HET: What Is Being Done? For What End? Under What Circumstances?

St. Thomas Aquinas (1983, *Summa Theologiae* I-II, Q.18.2–4) gives three factors that must be considered in determining whether an action is good: the object of the act, the circumstances, and the end of the action. Although all three of these factors must be good if the act is to be considered good, Pope John Paul II (1993, no. 79) has called the object of the human act “the decisive element for moral judgment” because it establishes whether an action is able to be ordered to the good.

The simplest and most obvious way of characterizing the object of the act of HET is to say that the object is to transfer an embryo into the womb. Several people have taken this object to be inherently wrong. Francis de Rosa (2005, pp. 61–62) and Mary Geach (1999, p. 345) argue that the object amounts to impregnation of a woman outside the marital act, which violates the marital covenant. There are variations on this theme. Nicholas Tonti-Filippini (2003, pp. 120–132) argues that impregnation by HET effects an ontological change in a woman, making her a “woman with child.” HET, then, is the act of making a woman pregnant by a clinician, and for a married woman, this is an improper violation of the dignity of marriage.

Catherine Althaus (2005, pp. 116–124; this volume) agrees with the assessments of Tonti-Filippini but characterizes the moral object of HET differently. She talks about the “nuptial significance” of a woman’s body. For her, the object is of HET is to “seek pregnancy *outside* the conjugal act” (Althaus, this volume p. 43, p. 55). This, however, seems to over-characterize the object of the act, for the fact that pregnancy is sought outside the conjugal act brings in circumstances that ought to be considered separately from the object itself.

William E. May (2005, pp. 52–53) says that the object of either a married or single woman in undergoing HET is “to transfer this unborn human baby from the freezer to her womb and to nurture it there until birth.” May argues that such an object may be permissible because it does not participate in any way in the generation of the life of the embryo through in vitro fertilization (IVF). Neither does it violate a marriage, since no genital union outside marriage is involved. This seems to be a more correct characterization of the object of the act, although using the term “baby” for embryo again diverges from the commonly understood meanings of these terms. I would reiterate here that I am not denying the inherent human dignity of the embryo, but merely trying to avoid begging the moral question.

## 7 The *Donum Vitae* Controversy

In speaking about using embryos obtained by IVF for research, *Donum Vitae* states: “In consequence of the fact that they have been produced in vitro, these embryos which 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 safe means of survival which can be licitly pursued” (CDF, 1987, I.5). William Smith (1995, p. 72) reads this at face value – that there is no licit way to pursue a means of survival for embryos produced through IVF. He plausibly concludes that this is a “first principled insight” showing that HET is inherently wrong.

Others, however, have argued that this statement from *Donum Vitae* must be read in its context, and that when it is so read, it does not prohibit HET. Germain Grisez (1997, p. 242, no. 188) and Geoffrey Surtees (1996, pp. 8–9), for instance, argue that the statement should be understood as applying only to the options available to those who have wrongly brought the embryo into existence through IVF. Both appeal to an overall presumption of *Donum Vitae* of the importance of preserving the life of the embryos.

John Berkman (2002, pp. 117–121) suggests that the confusion over what action might licitly be pursued stems from confusion about the meaning of “spare” embryos, which, on his account, are those that are destined *not* to be implanted and not, as Smith seems to assume, those that *could* be implanted. The “absurd fate” to which the embryos are destined is, on Berkman’s account, the fact that they are destined for destruction, possibly after having been used for experimentation. The passage, then, presumes that the embryos *are not* being implanted, and not that they *should not* be implanted. In other words, the passage is descriptive rather than prescriptive.

This, however, is a strained reading of the text. To take the statement as referring only to embryos that are destined for destruction and not those that might possibly be implanted does not seem to be supported by the text. To interpret the text in this way makes the morality of the act of transferring the embryo depend on the intention of those who control the embryos and decide whether they might be made available for transfer. Surely the decision about whether the act of implanting an embryo can be licitly pursued does not depend on such intentions of those who have wrongly created it in the first place and now control its fate.

Furthermore, all of the above-mentioned parties involved in this debate are in agreement that having children by IVF should not be permitted, but that the embryos themselves constitute innocent human life. Those who favor HET do so as a way to “rescue” these embryos. But this leads to a moral quandary. If it is morally permitted for a woman not involved in the production of the embryo to have it implanted in her uterus, why should it be illicit for the woman responsible for bringing the embryo into existence by IVF to have it implanted?

As Karl Schudt (2005, p. 64) has recognized, a statement of the Pontifical Academy for Life (PAL, 2004) explicitly leaves open the moral question of HET, but it also serves as an important clarification for interpretation, for it tells against

some of the interpretations that would favor the moral probity of HET. The PAL refers to the loss of human embryos in the process of reproductive technologies as a “slaughter of innocents.” But it goes on, explaining and quoting *Donum Vitae*: “If rejected by those who have *ordered* them, these embryos ‘are exposed to an absurd fate, with no possibility of being offered the safe means of survival which can be licitly pursued’ ” (PAL, 2004). Reading this as the conditional statement that it is, we should conclude that the intention of destroying the embryo is a sufficient condition for the absurd fate, but not a necessary one. Thus, the absurd fate does not necessarily depend on the intention of “those who have ordered them.” The fate is absurd precisely because there is no means of survival that can be licitly pursued for the embryo. If HET *were* a licit means of survival, the fate of these embryos would not be absurd, for there would be a morally good way to remove them from their ill-fated condition, regardless of how they got there. Hence, I agree with Onder (2005, p. 81) that *Donum Vitae* cannot be saying that the moral wrong of IVF lies only in the fertilization, and that HET is “morally innocuous.” Smith’s original interpretation that there is indeed no morally unproblematic way to save frozen embryos is the most plausible reading of *Donum Vitae*.

Still, the PAL does go on to talk about “pre-natal adoption” and this is a specification not made in *Donum Vitae*. The Academy (2004) concludes that it is premature to address the subject directly without a “detailed analysis of scientific and statistical data on the subject.” I believe that even if HET is not *inherently* immoral, such data tell against the advisability of HET. What is most telling against HET comes to light when we look, as suggested by the Pontifical Academy for Life, at the scientific data.

## 8 Biomedical Aspect and Justice in Embryo Selection

Assisted Reproductive Technology (ART) has been used in the USA since 1981 to help women become pregnant. The ART procedure is concisely outlined by Onder (2005, pp. 78–80). Most of these treatments involve the transfer of fertilized human eggs into the woman’s uterus (Centers for Disease Control and Prevention [CDC], 2006, p. 1). In 2004, the latest year for which data are currently available from the CDC, donor eggs or embryos were used in approximately 12% of 15,175 ART cycles (CDC, 2006, p. 52). There were 4,439 frozen embryos from donors transferred, and 30.5% of these transfers resulted in live births (of one or more infants). It is important to note here that this statistic for live birth is not, precisely speaking, for the practice of HET, but rather is more likely to describe the use of donor eggs by women pursuing IVF–ET to create embryos which are on average of better “quality” than the embryos created with the eggs of a typical infertile woman. The average number of embryos transferred in these cases was 2.7 (CDC, 2006, p. 81). Thus, the number of frozen embryos used in these procedures far exceeds the number of live births. This is further complicated by the fact that the quality of embryos varies because of a number of factors, and the embryos of worst quality will end up being destroyed or at least refrozen.



The “quality” of embryos is an assessment of the viability of particular embryos in terms of prospects for successful implantation. Many factors are considered in making this assessment, taking into account crucial stages in the process of fertilization and development. The quality of the oocyte and the transformations that occur during the fertilization process contribute to the quality of the resulting embryo. In assessing the embryo itself, cell number and morphology are the most widely used criteria for quality evaluation. The type of blastocyst obtained is crucial, and complex selection strategies have been worked out for selecting embryos that have not been frozen. These involve several examinations from 18 to 108 h after insemination (Sakkas, 2001, pp. 223–232).

The fact that the embryos we are considering have been frozen presents us with another complex assessment. Without certain protective procedures, the freezing of living cells results in the formation of pure ice crystals along with changes in concentration of salts and pH, all of which would contribute to cell death. Hence, the rates at which embryos are frozen and thawed and the types of chemical cryoprotection used are critical, and several different protocols are employed (Mandelbaum & Ménéz 2001, pp. 243–256).

Frozen embryo transfer is less successful than fresh embryo transfer in producing pregnancies. Several factors are involved: embryo selection during freezing; inadequate post-thaw survival rates; and difficulty in determining whether an embryo will be viable (Tao et al., 2004, pp. 108–109). The exact stage at which the embryos are frozen makes a difference, as the developmental state of the embryo has a significant effect on its survival after thawing. In one study of over 4,000 frozen zygotes and cleaved embryos, rates of embryo survival (all cells surviving) after thawing were 86.5% for zygotes, 61.7% for 2-day-old embryos, and 43.1% for 3-day-old embryos (Salumets et al., 2003, p. 1890). This seemed to have little effect on the rates of clinical pregnancy, delivery and birth, except for an elevated rate of miscarriages in pregnancies resulting from transfers of 3-day-old frozen embryos. This is probably due to damage during the freeze-thaw procedures. The overall efficacy of the frozen embryo transfer, i.e., the birth rate per thawed embryo, was 7.3% (Salumets et al., 2003, p. 1890).

All of these technical considerations should alert us to the fact that HET is a much more complex undertaking than simply “rescuing” as many frozen embryos as possible. Doing what must be done in choosing embryos for HET may well lead to the destruction of more embryos than would be saved. Thus, a question of justice arises in choosing embryos. Which embryos deserve priority? Which ones are to be exposed to greater risks? If we accept the data from the above-mentioned study, we find that roughly 93% of frozen embryos will die in the process of thawing and implantation. If each embryo is considered to have equal worth, it seems unjust to give up more than nine out of ten to destruction in order to save one.

Jeffrey Keenan (this volume) reports that his National Embryo Donation Center has a higher-than-average success rate for pregnancy and delivery per embryo transfer after about fifty procedures. This center differs from the Snowflakes program of Nightlight Christian Adoptions in that the number of clinics performing the services is limited to “maintain quality control.” This may be a step in the right

direction, but it offers little help to Catholic health care facilities. A Catholic facility could not be involved in the freezing procedure. Thus, the “quality” of embryos brought about by the freezing procedure would be out of the hands of those who still must make decisions about which embryos will be implanted and which will not. My concern here is not about quality in the sense of selecting traits of individual to be brought to term, but rather about the biological state of embryos. Presuming that each embryo has equal human dignity, and given the difficulty in judging viability of frozen embryos, the task of fair selection of which embryos will be implanted is daunting.

Again, metaphor can mask this issue. Both the Snowflakes program and the National Embryo Donation Center stress the adoption metaphor. The ethical concerns that are raised are similar to the concerns raised in adoption: background checks of recipients, including alcohol and drug use; the possibility that genetic siblings might unknowingly marry; and questions about later seeking one’s genetic parents. Furthermore, donating couples can make stipulations about recipients, e.g., about place of residence or religious affiliation. Justice issues, then, focus on the interests of donors and recipients, and perhaps on the child once grown, but not primarily on the embryos themselves. If HET is to be carried out, and if we believe that each embryo is a unique human life worthy of protection, then much more attention needs to be paid to justice issues in selecting which embryos are chosen for implantation. Given the technological complexities at the present time, there seems to be no good way of making fair decisions about embryo selection. This is an important issue that has been masked by talk of “rescue” and “adoption.”

## 9 The Mission of Catholic Hospitals

So far, I have argued that the Catholic moral discourse on HET has been limited by focus on three particular metaphors, and has missed the ethical importance of certain technical issues and considerations of justice. I will now turn my attention to some other important principles in Catholic health care ethics. I believe that these principles also advise against the pursuit of HET by Catholic physicians and Catholic hospitals. Berkman & Carey (this volume) address several issues of justice in a thought experiment about a Catholic Embryo Adoption Agency; they do not, however, consider the possible impact on the Catholic health care system as a whole. All hospitals are challenged to use limited resources in the most effective and just way possible and Catholic hospitals are no different. Catholic hospitals, however, face even deeper and more complex challenges as they attempt to provide the best technical health care possible, use their resources wisely, and at the same time serve as institutional exemplars of a living faith tradition.

The United States Conference of Catholic Bishops (USCCB, 2001, Preamble), in reaffirming the Church’s commitment to health care, has referred to “the distinct and Catholic identity of the Church’s institutional health care services.” In issuing their *Ethical and Religious Directives for Catholic Health Care Services*, the bishops

have sought to provide “authoritative guidance on certain moral issues.” We should first note that in the preamble of this document, the bishops state that they presuppose their 1981 pastoral letter, *Health and Health Care*. In *Health and Health Care* (USCCB, 1981, II.C), the bishops assert that an “essential element of our religious tradition regarding human rights is the understanding that the works of mercy and the works of justice are inseparable.” Justice, then, cannot be secondary to the saving of some particular embryos, which may be “rescued” only because they are of “high quality” or come from donors of a particular background or religion.

The *Ethical and Religious Directives* do not specifically treat the issue of HET, although they do forbid use of assisted conception when such a technique “separates procreation from the marital act in its unitive significance” (USCCB, 2001, Directives 40–41). Since definitive moral answers about HET are not forthcoming from such formulations of Catholic moral teaching, it might be instructive to examine this issue in the context of what the bishops say about the social responsibility of Catholic health care services. Part One of the *Ethical and Religious Directives for Catholic Health Care Services* is devoted to this topic. The introduction to Part One lists five “normative principles that inform the Church’s healing ministry.”

First, there is a commitment to the promotion and defense of human dignity which respects “the sacredness of every human life from the moment of conception until death” (USCCB, 2001, I, Intro.). This “entails a right to the means for the proper development of life.” Although its concern is the sacredness of life throughout the entire human lifespan, this principle seems to point directly to the moral conundrum of the practice of freezing embryos. It is easy to understand why people would argue that “adoption” or “rescue” of frozen embryos is a response that takes seriously the bishops’ call to provide a means for proper development of the life of these embryos. “Rescue” seems even more urgent when considered in light of the second principle.

The second principle comes from the biblical mandate to care for the poor and calls attention to the particular health care needs of the poor. The bishops call Catholic health care facilities to express this care for the poor “at all levels of Catholic health care” (USCCB, 2001, I, Intro.). Again, it is easy to see how people might read this second principle as a call for “rescue” of the embryos as the most vulnerable segment of human life.

The third principle calls Catholic health care a “ministry” that should contribute to the common good. The common good requires that the economic, social and political conditions necessary to protect “the fundamental rights of all individuals” are ensured. This is necessary to enable all individuals to “fulfill their common purpose and reach their common goals” (USCCB, 2001, I, Intro.). Once more, it is easy to see why “adoption” of embryos might be taken as a way to help not only the embryos to reach their purpose, but also to foster the common good that recognizes the dignity of each individual.

The fourth principle states that “Catholic health care ministry exercises responsible stewardship of available health care resources” (USCCB, 2001, I, Intro.). This involves the promotion of equity of care for every person and for the good health of the entire community. The need for allocation of expensive medical resources is obvious to all, and it presents one of the most difficult challenges to contemporary

medical ethics. The bishops here call all people to responsible stewardship of the scarce resources that must be allocated, keeping in mind that the goal of any allocation is the good of all. They suggest that responsible stewardship of health care resources is best accomplished when people from all levels of society participate in discussions, but they also invoke the principle of subsidiarity to guide these discussions. The role of the principle of subsidiarity here is in keeping with the teaching of the Second Vatican Council. The section on economic development in the Pastoral Constitution on the Church in the Modern World (*Gaudium et Spes*, 1975, no. 65) uses subsidiarity in asserting that all citizens “have the right and duty to contribute according to their ability to the genuine progress of their own community,” and that economic development is not to be left to the judgment of a few individuals. It goes on to say that the common good is “seriously endangered by those who ‘hoard resources unproductively.’” Resources in health care must be allocated prudently if we are to take seriously this principle. Furthermore, this stewardship is a necessary means for carrying out the second principle, to care for the poor and the third principle, to foster the common good. Whether prudent stewardship should allow the carrying out of HET in Catholic hospitals is something that must be further considered.

The fifth principle recognizes that we live in a pluralistic society, in which people will seek from Catholic hospitals medical procedures that are contrary to Catholic teaching. Catholic health care facilities may refuse to “provide or permit” such services without offending the right of individual conscience (USCCB, 2001, I, Intro.). Although there is no definitive Church teaching on HET, this practice is so closely related to IVF, which the Church has taught as wrong, that it requires careful scrutiny. The principles of cooperation and the need to avoid scandal are especially germane here.

It is clear that these five principles need interpretation for specific cases and that they give ideals that can conflict with each other. Nothing in these principles suggests an inherent wrong in HET. Nonetheless, even if the right to life is the most fundamental basis for all other rights, this does not entail that all life, even innocent life, must be preserved at all costs. The well-accepted distinction between ordinary and extraordinary means of preserving life recognizes that sometimes the burdens of even a life-saving procedure can outweigh the benefits.

The question, then, is whether encouraging Catholic hospitals to begin HET programs would work toward fulfilling these principles. How would these principles be balanced in such a program? Three concerns – stewardship, cooperation with evil, and avoidance of scandal – deserve further consideration. I believe that they tell against the advisability of HET programs in Catholic hospitals, even in light of the apparent probity of HET in furthering the first two principles.

## 10 Stewardship

In the present context of out-of-control health care costs, we must carefully consider the responsible stewardship of resources. Catholic hospitals, along with all hospitals, struggle for their mere survival. Beginning HET programs in Catholic

hospitals would probably require hiring of additional people with expertise in embryo implantation, or at least the further training of currently employed physicians, and this might well involve significant resources that might otherwise be used to care for the poor who are experiencing suffering in ways that are not possible for frozen embryos. I know that some may respond by pointing out the plight of defenseless human life doomed to a frozen limbo, but stewardship of resources is something that should be carefully considered when there are people quite literally screaming for medical attention that cannot be given because it is too expensive.

Indeed, Directive 6 of the *Ethical and Religious Directives for Catholic Health Care Services* calls the Catholic health care organization to be “a responsible steward of the health care resources available to it” (USCCB, 2001). This is necessary for the Catholic health care facility to carry out its mission of “service to and advocacy for those people whose social condition puts them at the margins of our society and makes them particularly vulnerable to discrimination” (USCCB, 2001, Directive 3). The third directive enumerates these people and includes the poor, the uninsured and underinsured, children, single parents, the elderly, those with incurable diseases and dependencies, racial minorities, immigrants, and refugees. The list also includes the unborn. Hence, I agree with Brakman (this volume) that embryos deserve consideration based on stewardship, but I argue that responsible stewardship of very limited resources requires us to make prudential judgments about how best to serve so many who are in need, thus making it far less clear to me than it is to Brakman (this volume) that HET is permissible.

## 11 Cooperation

Presuming that the production of embryos and freezing them is wrong in the first place, the question is whether HET amounts to unjustified cooperation with an evil. The general question of cooperation with evil has long been considered in moral theology. Traditional analysis of the problem distinguishes between formal and material cooperation. Cooperation is formal if the cooperator helps another to do some evil and also intends the evil. Formal cooperation is always wrong. Cooperation is material if the cooperator helps another to do some evil, but does not do anything evil in rendering assistance, and also does not intend the evil action. Material cooperation is immediate if the cooperator directly helps another to perform the evil act; that is, the one who renders immediate material cooperation does something that is necessary to bring about the evil act. Hence, it is considered always to be wrong. Directive 70 of the *Ethical and Religious Directives for Catholic Health Care Services* explicitly states: “Catholic health care organizations are not permitted to engage in immediate material cooperation in actions that are intrinsically immoral” (USCCB, 2001). Material cooperation is mediate if it provides less direct assistance. Mediate material cooperation may sometimes be morally justified, and is judged by how proximate or remote the cooperation is in bringing about the evil. For example, passing instruments to a surgeon during an

abortion is proximate mediate material cooperation (assuming that the cooperator objects to the abortion and is, e.g., only doing what is necessary to keep a job), while sterilizing the instruments is more remote. In judging the morality of mediate material cooperation, one must consider how proximate the cooperation is, and the proportionality between the good achieved by the cooperation and the evil brought about. Furthermore, the cooperation must avoid scandal that would lead others into doing evil (Davis, 1938, pp. 341–343; Prümmer, 1957, pp. 103–104).

In the case of HET, it seems that as long as one had no role in the fertilization of the embryo, any cooperation is only material, and remote enough to be beyond moral suspicion. Grisez (1997, pp. 242–243) accepts this way of thinking as do Brown and Eberl (this volume). Onder (2005, pp. 91–92), on the other hand, finds the situation more complicated. He argues that current practice is to transfer three to five “high quality” embryos into a woman, although that number may now have decreased a bit. Implanting more embryos increases the risk of multiple pregnancy. Onder argues that any embryos that are not implanted because they are “low quality” or embryos that go unimplanted for some other reason then become the responsibility of the woman seeking implantation. They might then be refrozen or offered for research. Thus, the woman does bear some responsibility for cooperation in what the clinic decides to do with these unimplanted embryos. Onder is presuming here that the implantation would be done in the fertility clinic where the IVF was carried out. A Catholic hospital might be able to control some of these situations and in fact Keenan (this volume) reports that the Christian based National Embryo Donation Center and its affiliates are exceedingly careful in this regard. It seems unlikely, however, that all such morally problematic factors could be eliminated. The technical demands of embryo freezing and thawing seem to insure that many of these embryos cannot safely be implanted. If such quality decisions are left to the IVF clinic and only those embryos that pass muster are sought by the Catholic hospitals, it seems that the cooperation becomes more proximate. This is not a definitive judgment against HET on the basis of cooperation with evil, but it should give us pause.

## 12 Scandal

Connected with judgments of the moral probity of material cooperation in HET is the problem of scandal. Scandal is speech or action that leads others to do something wrong. As pointed out above, one of the things that would render wrong an otherwise permissible material cooperation is that it would give scandal. Directive 71 of the *Ethical and Religious Directives for Catholic Health Care Services* warns that the possibility of scandal must be considered in the context of material cooperation. It states: “Cooperation, which in all other respects is morally licit, may need to be refused because of the scandal that might be caused.”

The participation of Catholic hospitals in HET might well cause scandal among those who affirm Catholic teaching against artificial reproductive technologies. Mary Geach (1999, p. 342) fears that accepting HET would be seen as “a nice

Catholic reproductive technology.” Directive 71 explains that scandal can sometimes be avoided though adequate explanation about what is being done (USCCB, 2001). Though Brown and Eberl (this volume) and Berkman and Carey (this volume) believe that the scandal issue could be practically handled, I think we should not be overly optimistic about the power of education to effect change about emotionally charged issues. There is widespread confusion among Catholics about end-of-life care and common misunderstanding of the Church’s teaching about the distinction between ordinary and extraordinary means. I have often heard it said, “I am Catholic – we have to do *everything possible* to keep me alive.” This mistaken view can sometimes be taken as following from a Catholic affirmation of the value of life. HET raises a real danger of scandalizing those who oppose IVF. It might lead more Catholics down a slippery slope toward accepting IVF. If we allow part of ART, they might say, why not allow the rest?

Encouraging “embryo adoption” might also discourage adoptions in the non-metaphorical sense. This is directly related to social justice and aiding the poor. The relief of suffering of children already born and now without parents should take priority over gestating embryos to bring new children into the world. Orphaned children very often suffer in a very real way that is impossible for an embryo. Even if we say that a frozen embryo “suffers” the indignity of something that should not be done to humans, embryos “suffer” only metaphorically since consciousness is a necessary condition for what we normally take to be suffering. Embryos at the blastocyst stage lack the neurological development necessary for consciousness and hence do not suffer in the same sense. The “rescue” metaphor, taken too literally in the case of frozen embryos, can blind us to the needs of others, and cause a different sort of scandal.

### 13 The Absurd Fate of Spare Embryos

The problem of what to do with the frozen embryos that have been abandoned by their parents remains and there is no morally good solution. The “least worst” course may be simply to allow these embryos to die. There have been moral arguments for this option that are at least as plausible as the arguments in favor of HET. Cardinal Basil Hume suggested this solution after a 1996 British law mandated that embryos could not be held in a frozen state for more than 5 years. Cardinal Hume argued then that allowing the “adoption” of spare embryos was “morally unacceptable” (RNS, 1996, pp. 808–809). There is justification for the recommendation to allow the embryos to die if one sees cryopreservation as an extraordinary or disproportionately burdensome means of extending life. Tonti-Filippini plausibly argues that these frozen embryos are in a “state of arrested development” and that keeping them in such a state indefinitely “does of fend against the good of life” (2003, p. 134). He asks, rhetorically: “Do we not have an obligation to return the embryo back to as a [*sic*] normal a living state as we can, as soon as we can?” (Tonti-Filippini, 2003, p. 136). He advocates thawing and rehydrating the embryos, thus returning them to “their natural state of growth and dynamism.” Death would then

result because they would “develop to a state of maturity in which their vital needs could not licitly be met” (Tonti-Filippini, 2003, p. 136). As Tonti-Filippini recognizes, seeing cryopreservation in terms of a disproportionately burdensome means of extending life is quite plausible. Given the fact that the majority of frozen embryos cannot be successfully implanted and brought to term for purely biological and technical reasons, withdrawing cryopreservation as extraordinary means may be the least problematic solution to a vexing problem.

While there may be no argument for the intrinsic evil of HET that is compelling to all, it would be improper to conclude that this should justify Catholic hospitals to venture into HET. I have argued that well-intentioned efforts to offer HET as an answer to the problem of the “absurd fate” of frozen embryos, by focusing on such metaphors as “rescue” and “adoption,” have not only stacked the deck in favor of the practice but have also limited moral debate. When we consider broader issues of justice, stewardship of scarce resources, cooperation with evil, and the possibility of scandal, we see broader implications that should give us pause before endorsing the practice.

## References

- Althaus, C. (2005). ‘Can one “rescue” a human embryo? The moral object of the acting woman,’ *National Catholic Bioethics Quarterly*, 5, 113–141.
- Benedict XVI (2006). *Discorso di sua Santità Benedetto XVI ai Partecipanti All’Assemblea Generale Della Pontificia Accademia per la Vita e al Congresso Internazionale ‘L’Embrione Umano Nella Fase del Preimpianto,* [Online]. Available: [http://www.vatican.va/holy\\_father/benedict\\_xvi/speeches/2006/february/documents/hf\\_ben\\_xvi\\_spe\\_20060227\\_embrione-umano\\_it.html](http://www.vatican.va/holy_father/benedict_xvi/speeches/2006/february/documents/hf_ben_xvi_spe_20060227_embrione-umano_it.html).
- Berggren, D. (1962). ‘The use and abuse of metaphor, I,’ *Review of Metaphysics*, 16, 237–258.
- Berkman, J.R. (2002). ‘The morality of adopting frozen embryos in light of *Donum Vitae*,’ *Studia Moralia*, 40, 115–141.
- Berkman, J.R. (2003). ‘Gestating the embryos of others: Surrogacy? Adoption? Rescue?’ *National Catholic Bioethics Quarterly*, 3, 309–329.
- Black, M. (1962). *Models and Metaphors: Studies in Language and Philosophy*. Ithaca, NY : Cornell University Press.
- Boyle, Robert R., S.J. (1954). ‘The nature of metaphor,’ *Modern Schoolman*, 31, 257–280.
- Brakman, S.V. (2007). ‘Paradigms, practices and politics: Ethics and the language of human embryo transfer/donation/rescue/ adoption,’ In: M.J. Cherry & A.S. Iltis (Eds.), *Pluralistic Casuistry. Moral Arguments, Economic Realities, and Political Theory, Essays in Honor of Baruch A. Brody* (pp. 191–210). Dordrecht, The Netherlands: Springer.
- Brugger, E.C. (2005). ‘In defense of transferring heterologous embryos,’ *National Catholic Bioethics Quarterly*, 5, 95–112.
- Centers for Disease Control and Prevention (CDC) (2006). *2004 Assisted Reproductive Technology Success Rates: National Summary and Fertility Clinic Reports* [Online]. Available: <http://ftp.cdc.gov/pub/Publications/art/2004ART508.pdf>.
- Congregation for the Doctrine of the Faith (1987). *Donum Vitae (Instruction on Respect for Human Life in Its Origin and on the Dignity of Procreation: Replies to Certain Questions of the Day)* [Online]. Available: [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_19870222\\_respect-for-human-life\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19870222_respect-for-human-life_en.html).
- Davis, H. (1938). *Moral and Pastoral Theology, Vol. 1*, 3rd edition. New York: Sheed & Ward.
- de Rosa, F. (2005). ‘The transfer of abandoned frozen embryos—identifying the object of the act,’ *National Catholic Bioethics Quarterly*, 5, 59–62.



- Geach, M. (1999). Part 1 of 'Are there any circumstances in which it would be morally admirable for a woman to seek to have an orphan embryo implanted in her womb?' in L. Gormally (Ed.), *Issues for a Catholic Bioethic: Proceedings of the International Conference to Celebrate the Twentieth Anniversary of the Foundation of the Linacre Centre 28–31 July 1997* (pp. 341–446). London: The Linacre Center.
- Grisez, G.G. (1997). 'Should a woman try to bear her dead sister's frozen embryo?' in *Way of the Lord Jesus, Vol. 3: Difficult Moral Questions* (pp. 239–244). Quincy, IL: Franciscan Press.
- John Paul II (1993). *Veritatis Splendor. Origins*, 23, 297–334.
- Jonsen, A.R., & Toulmin, S. (1988). *The Abuse of Casuistry: A History of Moral Reasoning*. Berkeley, CA: University of California Press.
- Klubertanz, G.P. (1960). *St. Thomas Aquinas on Analogy: A Textual Analysis and Systematic Synthesis*. Chicago, IL: Loyola University Press.
- Mandelbaum, J., & Ménézou, Y. J.R. (2001). 'Cryopreservation of human embryos,' in D.K. Gardner, A. Weissman, C.M. Howles & Z. Shoham (Eds.), *Textbook of Assisted Reproductive Techniques: Laboratory and Clinical Perspectives* (pp. 243–256). London: Martin Dunitz.
- Onder, R.F. (2005). 'Practical and moral caveats on heterologous embryo transfer,' *National Catholic Bioethics Quarterly*, 5, 75–94.
- Pontifical Academy for Life (2004). *Final Communiqué on 'The Dignity of Human Procreation and Reproductive Technologies. Anthropological and Ethical Aspects'* [Online]. Available: [http://www.vatican.va/roman\\_curia/pontifical\\_academies/acdlife/documents/rc\\_pont-acd\\_life\\_doc\\_20040316\\_x-gent-assembly-final\\_en.html](http://www.vatican.va/roman_curia/pontifical_academies/acdlife/documents/rc_pont-acd_life_doc_20040316_x-gent-assembly-final_en.html).
- Prümmer, D.M. (1957). *Handbook of Moral Theology*, G.W. Shelton (Trans.), J.G. Nolan (Ed.). New York: P.J. Kennedy.
- RNS (1996). 'Bishop responds to embryo, abortion cases,' *Christian Century*, 113, 808–809.
- Sakkas, D. (2001). 'Evaluation of embryo quality: a strategy for sequential analysis of embryo development with the aim of single embryo transfer,' in D.K. Gardner, A. Weissman, C.M. Howles, & Z. Shoham (Eds.), *Textbook of Assisted Reproductive Techniques: Laboratory and Clinical Perspectives* (pp. 223–232). London: Martin Dunitz.
- Salumets, A., Tuuri, T., Makinen, S., Vilks, S., Husu, L., Tainio, R., Suikkari, A.M. (2003). 'Effect of developmental stage of embryo at freezing on pregnancy outcome of frozen-thawed embryo transfer,' *Human Reproduction*, 18, 1890–1895.
- Schudt, K. (2005). 'What is chosen in the act of embryo adoption?' *National Catholic Bioethics Quarterly*, 5, 63–71.
- Smith, W.B. (1995). 'Rescue the frozen?' *Homiletic and Pastoral Review*, 96, 72–74.
- St. Thomas Aquinas (1983). *Summa Theologiae*. I–II, Q. 18.2–5, J.A. Oesterle (Trans.), St. Thomas Aquinas, *Treatise on Happiness*. Notre Dame, IN: University of Notre Dame Press.
- Surtees, G. (1996). 'Adoption of a frozen embryo,' *Homiletic and Pastoral Review*, 11–12, 7–16.
- Tao, J., Craig, R.H., Johnson, M., Williams, B., Lewis, W., White, J., Buehler, N. (2004). 'Cryopreservation of human embryos at the morula stage and outcomes after transfer' *Fertility and Sterility*, 82, 108–118.
- Tonti-Filippini, N. (2003). 'The embryo rescue debate: Impregnating women, ectogenesis, and restoration from suspended animation,' *National Catholic Bioethics Quarterly*, 3, 111–137.
- United States Conference of Catholic Bishops (USCCB) (1981). *Health and Health Care: A Pastoral Letter of the American Catholic Bishops*. Washington, DC: United States Catholic Conference.
- United States Conference of Catholic Bishops (USCCB) (2001). *Ethical and Religious Directives for Catholic Health Care Services*, 4th ed. [Online]. Available: <http://www.usccb.org/bishops/directives.shtml>.
- Vatican II (1975). 'Pastoral constitution on the church in the modern world (Gaudium et Spes), 7 December 1965,' in A. Flannery (Ed.), *Vatican Council II: The Conciliar and Post Conciliar Documents* (pp. 903–1014). Boston, MA: St. Paul Editions.
- Watt, H. (1999). Part 2 of 'Are there any circumstances in which it would be morally admirable for a woman to seek to have an orphan embryo implanted in her womb?' in L. Gormally (Ed.), *Issues for a Catholic Bioethic: Proceedings of the International Conference to Celebrate the Twentieth Anniversary of the Foundation of the Linacre Centre 28–31 July 1997* (pp. 347–352). London: The Linacre Center.

# Human Embryo Transfer and the Theology of the Body

Catherine Althaus

## 1 Introduction

Establishing the morality of frozen embryo transfer is a delicate task. Debate amongst Catholic philosophers and theologians has developed over time. As I see it, at the centre of the argument lie differences in opinion concerning the specification of:

1. The moral object of the act;
2. The meaning and definition to be ascribed to the conjugal act and the marital covenant; and, as a consequence
3. The precise specification of what maternity and paternity means as well as the dignity that must be afforded a child who has a right to be

[C]onceived, carried in the womb, brought into the world, and brought up within marriage. [As] it is through the secure and recognized relationship to his own parents that the child can discover his own identity and achieve his own proper human development. (Congregation for the Doctrine of the Faith [CDF], 1987, II.A, no. 1)

One group argues in favour of embryo transfer and suggests the moral object of the act to be: to transfer an unborn baby from the freezer to a woman's womb, for her to be impregnated and to gestate and nurture the baby there until birth.<sup>1</sup> In this volume, this group is represented through the work of Christopher Tollefsen, Darlene Fozard Weaver and Sarah-Vaughan Brakman.

The other group, amongst which I place myself (and which Reverend Tadeusz Pacholczyk also represents in this volume), suggest the moral object of the act is: to seek pregnancy outside the conjugal act (or put another way to impregnate a woman outside the conjugal act and/or more widely to offend against marital fidelity because pregnancy is viewed to be a continuum from the conjugal act that causes an ontological change in the woman that cannot morally be isolated from the conjugal act).

---

<sup>1</sup> See E.C. Brugger. (2005). 'In defense of transferring heterologous embryos,' *National Catholic Bioethics Quarterly*, 5, 95–112; W.E. May (2005). 'On "Rescuing" frozen embryos: Why the decision to do so is moral,' *The National Catholic Bioethics Quarterly*, 5, 51–57.

The immediate differences between the two views include:

1. The first group's inclusion of both a transfer of an unborn baby to a woman's womb (something the second group might well argue belongs also to the moral choice of the clinician who, while she could be the woman in question, may not be), as well as an automatic extension of impregnation to include gestation and nurture until birth;
2. The second group's association of pregnancy with the conjugal act.

The underlying contrast in theologies of the body raised by these immediate differences in moral object definition is what I shall endeavour to elaborate in this chapter. Thus, I propose to restate and develop here my argument (see Althaus, 2005) concerning the moral object of the acting woman at stake in frozen embryo transfer and then respond to various objections made against this position, concentrating especially on the arguments of May (2005) and Brugger (2005).

It is with specific purpose that I concentrate on establishing the moral object of the act using the perspective of moral theology. Any number of political, economic, legal, or other socio-economic issues and observations could be made about the various implications associated with embryo transfer in order to assess the morality of the act. These are, however, peripheral to the central question of whether the act is, in itself, a moral one. Discussion of such material is pertinent only to the extent these perspectives contribute to establishing the moral object of the act or, if embryo transfer is considered moral in its object, in assessing the ends and circumstances associated with its enactment. If the truth is to be established concerning the morality of embryo transfer, political, economic, legal, and other socio-economic data will only support, but not necessarily establish, such truth.

It is also with specific purpose that I utilize the reductionist expression of embryo *transfer* rather than embryo *adoption*. My argument hinges on an appreciation of the nuptial significance of human life that precludes use of the term adoption, as such terminology provides a certain connotation to what is being chosen in this particular act that I, at this point, find unsupportable. Social adoption is *morally* pursued in specific circumstances such as the death of the parents. Use of the term implies a morally permissible act that does not mar the communion of persons necessary to the conjugal, parental, and familial love and environment required for the human dignity of parents and child. For reasons different from those William Stempsey offers (this volume), I argue here that adoption is not a moral availability and in fact is not an applicable concept. Until the moral object of the act is settled, I prefer in this chapter to utilize the term embryo transfer – a strictly physicalist expression (and one that I do not believe adequately describes the moral object of the act) – to avoid muddying the issue with morally laudable, but inaccurate, connotations associated with the terms “rescue” or “adoption.”

## 2 Summary of My Argument of the Moral Object of the Acting Woman with Embryo Transfer

My assessment of the moral object of the acting woman contemplating the plight of frozen embryos and her response to that plight is based on a reading of the “nuptial stages of life,” a term used by John Paul II to draw attention to the relationship of humanity to God, as creatures made in His image and likeness. It is in the context of this imagery and likeness that each human, and humanity more generally, can seek and fulfill the fullness of human nature. Because we are personal, sexual beings, resplendent with rational capacities and integrated spiritualized bodies, we act and exist and “generate” in particular ways that are uniquely human. We share in some of the aspects of reproductive generation akin to animals and other material beings, but we also share in the divine generation found in the Godhead (Cf. Gregory, this volume, which engages Protestant theologies of marriage and parenthood). John Paul II (1997, p. 453) stated:

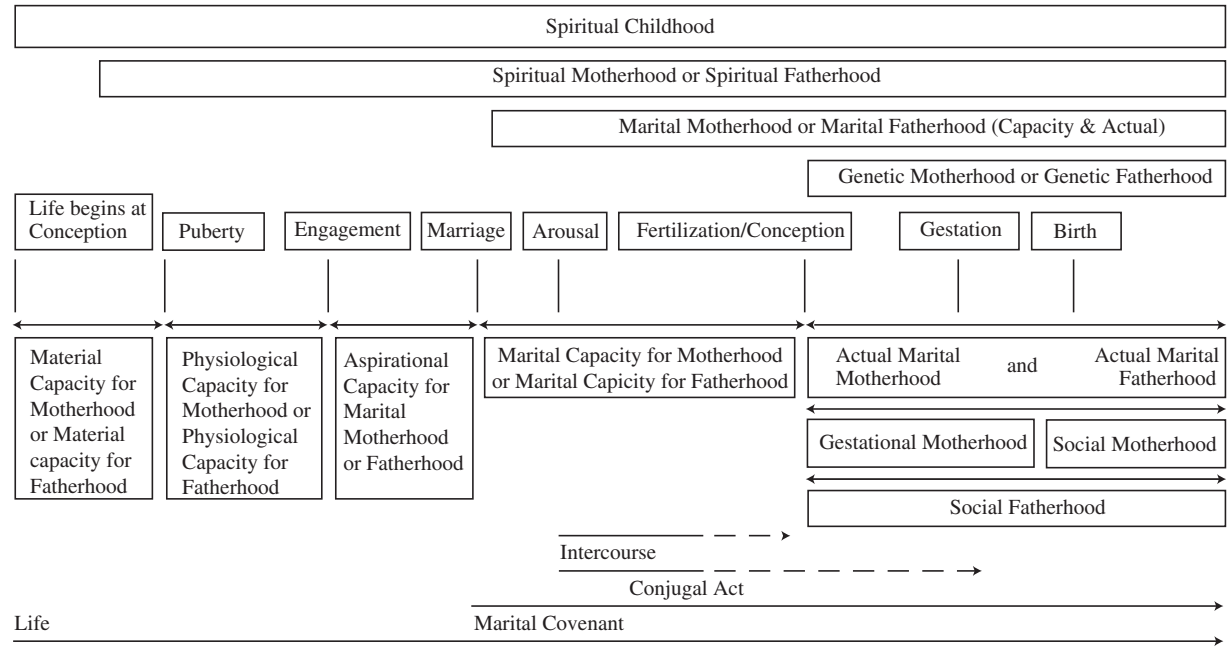
All “generating” among creatures finds its primary model in that generating which in God is completely divine, that is spiritual. All “generating” in the created world is to be likened to this absolute and uncreated model.

It is with this peculiar nuptial meaning to human life and human “generation” that my argument progresses and against which it is set. Using the following figure and explanation of the nuptial stages, I suggest that greater attention be paid to the understanding and definitions of childhood, motherhood, and fatherhood when considering the morality of the embryo transfer dilemma.

### 2.1 *Nuptial Stages of Life*

Figure 1 proposes a depiction of how the various stages of life can be characterized according to different stages of childhood, motherhood, and fatherhood. I distinguish between genetic, gestational, and social motherhood, as these particular phases of life have been raised in debates concerning embryo transfer. It is notable that the depiction is based on spiritual, material, and moral status.

Another point of note is that a particular definition has been given to the notion of “birth” – for the purposes of my argument I have defined birth to be the point at which a child’s life can be independently sustained outside a woman. While a cryopreserved embryo may in one sense be “independently sustained outside women,” it cannot be said to have been born according to my definition, because its life exists in arrested change and development and it cannot, until means such as an artificial womb are developed, survive without the body of a woman.



**Fig. 1** The nuptial stages of life. (From Althaus, 2005. With permission.)

## 2.2 *Spiritual Childhood, Motherhood, and Fatherhood*

Human *life* understood biologically begins at conception (i.e., when fertilization of the ovum by the sperm is successfully completed). Precise articulation as to when a human *person*, – i.e., a unity of spirit and matter – has come into existence has yet to be pronounced by the Church. Nonetheless, it is fair to say at this stage in time that at the point of conception it is not unreasonable to assume that there is a human person present. The spiritual dimension of human existence (which is present because of the human soul) renders life able to undertake spiritual childhood (Sheed, 1957, pp. 14–21).<sup>2</sup> Spiritual childhood refers to our being adopted children of God, and includes a sense of dependence, openness, trust, and wonder. Depending on the sex of the child, that life is also able to take on spiritual motherhood or spiritual fatherhood.<sup>3</sup> Spiritual motherhood and spiritual fatherhood refers to the ability of a human person to cooperate with God's work of salvation and act as intercessors (by performing God's will, and offering prayer, works of penance, and suffering) to promote the spiritual welfare of other human beings. Whereas spiritual childhood occurs in its fullness from the moment of conception, the cooperation with God required from spiritual motherhood and spiritual fatherhood means that from the moment of conception a human being only has a spiritual capacity (as opposed to an actuality) for spiritual motherhood/fatherhood with the *fullness* of such status emerging upon exercise of rational capacities and active choice by the person. This *spiritual* nuptial dimension carries on through the whole of life.

## 2.3 *Material Capacity*

The corporeal dimension occurs in more stages. The moment of conception is a stage of life that forms the basis for *material capacity* for motherhood or fatherhood. The early embryonic life has the capacity for motherhood or fatherhood, but as yet the fullness of physiological motherhood or fatherhood is not actual.

---

<sup>2</sup> See also J.F. Russell. *St Therese and Spiritual Childhood*, <http://www.littleflower.org/learn/reflect/frjrspiritalchildhood.asp> (last accessed October, 2007) and J. Seward (1999). *The Way of the Lamb: The Spirit of Childhood and the End of the Age*. Edinburgh: T&T Clark.

<sup>3</sup> Spiritual motherhood and spiritual fatherhood refers to the ability of a human person to cooperate with God's work of salvation and act as intercessors (by performing God's Will, and offering prayer, works of penance and suffering) to promote the spiritual welfare of other human beings. This promotion of the spiritual welfare of other human beings truly involves motherhood and fatherhood in the sense that we cooperate with God's act of giving supernatural life to souls.

## 2.4 *Physiological Capacity*

At puberty, the life has developed to a stage whereby it is physiologically capable of motherhood or fatherhood but it is not morally fit to have children until the marital covenant has been entered. While it may be possible for males and females at this stage to engage in intercourse and to procreate, their union is not *moral* unless and until marriage has taken place. This moral bond of marriage is required by God (“What God has joined, man must not divide”).<sup>4</sup> This bond also has natural law foundations and can be traced to the nature of man.<sup>5</sup>

## 2.5 *Aspirational Capacity*

After puberty, a person may be discerning his or her vocational calling from God. If one becomes engaged to another person, this involves making an *aspirational* promise that highlights one’s intention to marry another. Engagement is a time when the woman or man is preparing for the actual marriage commitment. This stage of nuptial life can actually pertain either to physical marriage between a man and a woman or to spiritual marriage between a person and God, as occurs in religious life or priesthood. It is important to note that engagement usually involves an *aspirational* promise to marry a certain person, whereas marriage involves actual commitment. Engagement is not a permanent stage; only when public marital vows have been taken is the stage now marital and considered permanent.

## 2.6 *Marital Capacity*

Upon marital union, when the spouses exchange public vows, the man and woman have the moral marital capacity for motherhood or fatherhood. After marriage, they may morally engage in intercourse, undertaken chastely and fully open to the unitive and procreative dimensions, even though conception may not actually result.

## 2.7 *Intercourse, the Conjugal Act, and Conception*

Intercourse is proper to the marital union. The “conjugal act,” as I propose its definition, commences with arousal and potentially extends to the point of conception or further (this explains the dotted arrow on Fig. 1). Should conception not occur,

---

<sup>4</sup> See also Genesis 1 and 2, Letter to the Ephesians 5: 25–32.

<sup>5</sup> See John Paul II (1997). *The Theology of the Body: Human Love in the Divine Plan* (pp. 387–388). Boston, MA: Pauline Books and Media.

the conjugal act still remains complete. Marital capacity for actual motherhood or fatherhood (see below) continues throughout the marital covenant, and is realized when conception takes place.<sup>6</sup>

## 2.8 *Fertilization*

Fertilization is the point at which the sperm engages with the ovum and a new life begins. Fertilization can occur during intercourse or shortly thereafter. The process of cell fusion and division can take up to 12 hours to begin (Willke & Willke, 1997). Accordingly, because of the timing variations that are possible, intercourse has been indicated on Fig. 1 with a dotted line extended to fertilization/conception.<sup>7</sup>

## 2.9 *Actual Marital Motherhood and Fatherhood*

Should conception occur, the conjugal act continues (because the body of the woman is still involved) and actual marital motherhood and fatherhood commences. The stage of actual marital motherhood and fatherhood begins almost instantaneously at conception. As soon as conception occurs, actual marital motherhood and fatherhood takes on a new form, because then gestation commences. This stage of actual marital motherhood and fatherhood is where Watt's (1999, p. 351) description of "genetic motherhood" (and fatherhood) appears to commence. Genetic motherhood and fatherhood continues throughout the life of the child.<sup>8</sup> For this reason the box for actual marital motherhood and fatherhood in Fig. 1 extends in line with genetic motherhood and fatherhood.

---

<sup>6</sup>It is worth noting at this point that arousal is an act that can be undertaken by one person (masturbation) rather than by two spouses (which is proper to the marital covenant and conjugal act). Masturbation is not moral, because it separates the unitive and procreative dimensions of the conjugal act and the marital covenant. Masturbation involves the seeking of sexual pleasure outside the conjugal act and marital covenant. It is also possible that homosexuality can be expressed in and through arousal, even though it is not moral. As with masturbation, homosexuality involves the seeking of sexual pleasure outside the conjugal act and marital covenant.

<sup>7</sup>It is worth noting that it is possible for a man or woman (single or married) to use contraceptive devices as a means of preventing conception. This is not moral because it separates the unitive and procreative dimensions of the conjugal act. Contraception seeks only the unitive dimension of intercourse. Some contraceptive devices aim to prevent conception prior to fertilization. These are rightly called "contraceptive." Other contraceptive devices do not aim to prevent conception, so much as to kill the embryo by preventing it from receiving gestational motherhood in the form of uterine nutrition etc. These contraceptive mechanisms properly should be called "abortifacients."

<sup>8</sup>While it is possible for artificial fertilization to take place, as in IVF, this is not moral because, it too, is seeking pregnancy outside the conjugal act (it seeks the procreative dimension only).



## 2.10 Gestation

Gestation is that period of time from fertilization until birth.<sup>9</sup> Thus a woman normally becomes a gestational mother from fertilization, whereas at this stage the man assumes social fatherhood given his bodily contribution is no longer required to sustain the life of the child.<sup>10</sup>

## 2.11 Birth

Birth is the point at which a child's life can be independently sustained outside a woman. The point of birth can theoretically occur anytime across the stage of gestation depending on the technology available and the health situation of the child. Birth can occur naturally or can occur through technological means such as Caesarian procedures. It is at birth that social motherhood commences and social motherhood and fatherhood realign. It is at the point of birth that adoption becomes a moral possibility because the body of the woman is no longer required.<sup>11</sup>

## 3 The Moral Object in Light of the Nuptial Stages

With the use of the nuptial stages of life, it is my contention that genetic and gestational motherhood are intrinsically connected through, and within, the body of the woman. The life of an embryo can be frozen, arresting its change and development, but that life cannot *survive*, let alone flourish, without the body of a woman. The only exception is if artificial means were able to be developed, thereby raising a different moral question as to whether children should be gestated artificially.

The import of the intrinsic connection between genetic and gestational motherhood through the woman's body within the conjugal act is due to the nuptial significance of the body. Feminine nuptiality is such that she is capacitated to give a

---

<sup>9</sup> This definition can be found in *Dorland's Illustrated Medical Dictionary*, 29th edition (2000). Philadelphia, PA: W.B. Saunders. It is worth noting that technology allows the continuum of gestation to be interrupted. Assessing the morality of this interruption is one of the points of this article.

<sup>10</sup> The body of the father is not required for gestation; this is something unique to the mother. At this point the case of surrogacy is possible but immoral because it seeks pregnancy outside the conjugal act (it seeks the procreative dimension only). Cloning, also, is not moral because, among other reasons, cloning involves the seeking of pregnancy outside the conjugal act (it likewise seeks the procreative dimension only).

<sup>11</sup> The assessment of the moral act of adoption depends on the circumstances, such as whether the inseparability of the unitive and procreative dimensions of the marital covenant is at stake.

“home,” in the form of her body, to a human person, so it can grow and develop. Her “home” is her very person. The gift of herself in this manner is in accordance with the dignity of all the human persons involved – the child, the mother and the father.

It is because of the nuptiality of her body that I argue that gestational motherhood emanates from genetic motherhood as an ontological extension of the conjugal union of husband and wife, because the embryo is a new personal embodiment of that union. The embryo is conceived and sources its very life from the “two in one flesh” union of husband and wife in the conjugal act and its life continues to rely on that “two in one flesh” union. The child is in fact an embodied expression of the ontological reality of the “two in one fleshness” of its mother and father. Just as a man and woman remain individual persons, yet become ontologically “one flesh” in the marital covenant and thus become morally capable of engaging in the intimate expression of that union through the conjugal act, so too is there an ontological “two in one flesh” dimension to the relationship between gestational mother and child where both mother and child still remain individual persons.

A genetic mother conceiving and gestationally mothering a child through the conjugal act can donate herself to the child in this way without marring the communion of persons she has with her husband, her child, and without damage to her own sexual self. In fact it is through her nuptial body that the woman achieves communion with her husband and child as she becomes a mother in all its rich actuality and meaning. The self-donation is truly personalistic and relational and involves all parties being treated as subjects (and not objects) in their own right, while being in communion. The self-giving of the woman begins at the start of intercourse and continues as the conjugal union bears fruit and a new person (the child) houses itself in the loving and life-giving embrace of its mother’s body. It is only through these means that the mother, father, and child have an uninterrupted and unfractured spiritual, biological, emotional, and moral communion to ensure the human flourishing of all parties.

A woman seeking frozen embryo transfer is not in a position to morally do so. Her well-intended action motivated by self-donation in fact acts as a divisive measure, marring the communion she should have with her husband (because he is not a party to the act and yet *Donum Vitae* (CDF, 1987, II.A, no. 1), teaches that a husband and wife have a right to become parents only through each other), and with the child (because it is not her own and yet it is to become truly one with her flesh). Embryo transfer also does damage to her own sexual self (because she becomes something of a “reproductive unit” rather than a person made for inseparable love and life).

### 3.1 *Social Adoption Versus Embryo Transfer*

It is worth expanding on the reasons why a genetically unrelated woman cannot achieve communion with this child if she is prepared to establish a moral relationship with it through adoption and given that gestation will also forge a biological

connection between them. First, embryo transfer can and must be distinguished from social adoption. Transfer involves the seeking of pregnancy whereas social adoption does not. To choose to seek to become pregnant with child is a very different act from choosing to care for a child after it has been born. Embryo transfer and social adoption are radically different acts.

Why perhaps embryo transfer and social adoption are likened is because the y both, in different forms, make a woman a mother. Adoptive mothers become social mothers, transfer mothers become gestational and social mothers (although neither achieve the fullness of motherhood because neither can secure the continuity in genetic, gestational, and social motherhood that accompanies the full meaning of the term). What is morally significant, however, between social adoption and embryo transfer is *how* the woman seeks to become a mother.

The case of embryo transfer can be argued to be morally equivalent to the case of in vitro fertilization (IVF). The woman who seeks motherhood through IVF does so immorally because her chosen act involves domination and subjugation; she chooses to *make* rather than *beget* a baby. She damages her own sexual self (treating herself as a reproductive unit) as well as violating the dignity of the child (who morally has the right to come to be through the conjugal act) and her husband (who is also treated as a reproductive unit). The woman seeking motherhood through embryo transfer does the same. Her pregnancy is not the result of conjugal union between unsubstitutable spouses. It is the result of a “making” procedure, not the begetting of a child; a domination of the child, herself and her husband, done often with laudable intentions, but violating nonetheless the communion that morally ought to be present.

To say she is donating her sexuality in a generous self-giving way to save the life of the child is to misinterpret entirely the nature of communion and the theology of the body. In some ways, to describe a woman as donating her sexuality for the life of the child is like equating her with a person choosing to donate their heart as an organ transplant; it is not theirs morally to give. According to the theology of the body, embryo transfer is the type of act that continues the domination and objectification of each of the parties to the act – the man, the woman, and the child – that is associated with the IVF process that marked the child’s conception.

The act of embryo transfer in fact makes the woman as substitutable as the father and the child. Yet the moral relationships that are forged and fabricated by the process are dangerously real. In the case of genetically unrelated parents, there is a hopelessly mismatched set of kinship connections that are anathema to communion. The child experiences fracturing from its genetic parents, bonding with a new “gestational” mother who is genetically unrelated yet has biological and, assuming she adopts the child, social connections, and a social relationship with a genetically and biologically unrelated father. The genetically unrelated woman experiences biological bonding with a child who has no biological or genetic association with her husband. The man experiences a social relationship only and is left out of the biological connection between his wife and child, an absent figure from the conjugal union that should normally have seen him initiate the genetic bond with the child and his wife in and through his wife’s body.

It is also worth noting that social adoption is not an option unhinged from specific moral requirements. Social adoption cannot morally be pursued as a first-best or automatic replacement option for parenting children. The Stolen Generations in Australia is but one example highlighting the atrocities and harm associated with pursuing policies where such unfettered social adoption practices can be sustained.<sup>12</sup> The Stolen Generations refers to a group of Indigenous children in Australia who were forcibly removed from their parents predominantly according to government policies of assimilation into non-Aboriginal society. A National Inquiry conducted in 1995 by the Australian Human Rights and Equal Opportunity Commission found that between one in three and one in ten Indigenous children in Australia were forcibly removed from their families and communities between 1910 and 1970.

Social adoption cannot morally be pursued if the parent(s) are alive and are able to parent the child without harm. In the latter case, it would need to be established that the party inflicting the harm, either actually or potentially could not be assisted to stop such harm continuing; that is, the harm infliction, or capacity for harm infliction, would need to be shown to be unpreventable and unable to be resolved. All effort should be directed towards supporting the parents and child in order to allow the uninterrupted kinship to continue, thereby supporting the child's right to secure her own identity and achieve proper human development through the secure and recognized relationship with her parents (CDF, 1987, A.I).<sup>13</sup>

Social adoption and embryo transfer both fabricate kinship in the sense that interruption occurs to the continuity in genetic, gestational, and social parenting. There is a common logic behind embryo transfer and morally unfettered social adoption. This common logic suggests that families can be made by choice; there is no necessity for genetic, gestational, and social continuity, all that is needed is a

---

<sup>12</sup>In using this example I acknowledge that there were multiple objectives and rationales behind why the policies surrounding the stolen generations were pursued other than providing first-option social adoption (including the charge of cultural genocide, see K. Schaffer (2002). 'Getting over the genocide question: Australia and the Stolen Generations Debate,' *Borderlands e-journal, 1* [Online]. Available: [http://www.borderlandsejournal.adelaide.edu.au/vol1no2\\_2002/schaffer\\_getting.html](http://www.borderlandsejournal.adelaide.edu.au/vol1no2_2002/schaffer_getting.html)). Moreover institutionalisation, rather than social adoption, was also part of the scheme. Nonetheless, social adoption was a critical element to the program and it was chosen not as a last resort but even when the genetic parents were alive and there were appalling instances of forcible, as well as threatened and deceptive, removal of some children from these parents. See also *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families* (1997) [Online]. Available: [http://www.hreoc.gov.au/pdf/social\\_justice/submissions\\_un\\_hr\\_committee/6\\_stolen\\_generations.pdf](http://www.hreoc.gov.au/pdf/social_justice/submissions_un_hr_committee/6_stolen_generations.pdf).

<sup>13</sup>My awareness of the arguments concerning the importance of identity and kinship for human dignity is due to a powerful comparison of the kinship and identity implications for children associated with adoption, the stolen generations, and artificial reproductive technology practices that will be found in J. Rose. (forthcoming). *The Ethics of Sperm Donation Practices: The Moral and Social Significance of Biological Relatedness for the Offspring*, unpublished Ph.D. thesis, Queensland University of Technology, Brisbane.

committed relationship to be established. Contemporary social adoption programs are currently battling with this logic in the promotion of placements of children with homosexual couples and genetically unrelated single-parent arrangements.<sup>14</sup> Such a position of “only choice maketh the family” belittles the significance of the nuptial dimensions to the theology of the body that were outlined earlier and seriously denies natural law and human nature.

If a strict analogy between social adoption and embryo transfer is pursued, there is no necessity for unsubstitutable spouses be getting children through conjugal union. In fact the two acts are of a different order. Social adoption (morally bounded) and embryo transfer cannot be seen as part of the same constructed parenting continuum because of their different connections with the conjugal act. Social adoption creates a socially constructed parenthood that recognises a “completed” conjugal act (inclusive not only of conception but also gestation and birth) whereas the act of embryo transfer directly aims to emulate the conjugal act by directly contributing to the attempt to simulate normal conception, gestation, and birth.<sup>15</sup>

The theology of the body implicit to the nuptial stages of life outlined earlier demands – according to human nature – a unitive approach to the dimensions of spirit and matter and the goods of life and love within the human person in order for full human dignity and right morality to be achieved. It is within this context that embryo transfer, in seeking pregnancy outside the conjugal act, can be likened to the reverse mirror image of contraception. Whereas contraception is an attempt to have union without procreation, embryo transfer is an attempt to have procreation without union. The attempt fractures the conjugal act and the dignity afforded to the child and its parents in radical ways. In contraception, the bodies of the man and woman become objectified in a way that renders those human persons less than the fullness of the human subjects that they are. In embryo transfer, the body of the man is left out altogether while the body of the woman becomes a sexual unit without a similar input from her husband (assuming he is not the genetic father) nor a unitive dimension to their motherhood and fatherhood. As a consequence, disunity occurs between the biological and social kinship of the child with the woman and man. The rupture to the child’s dignity that occurs at the time of its conception outside the morally unified procreative and unitive intimacy of the nuptial bodies of its genetic mother and father is continued on in the body of the woman who attempts embryo transfer, leaving in wake a multiple set of disconnected genetic, gestational and social mothers and fathers all critically fracturing the child’s kinship and identity as well as that of the men and women seeking to parent these children.

---

<sup>14</sup>For one example, see Zenit (2006). *Catholic Charities and Gay Adoption: Father Roger Landry on the Conflict in Massachusetts* [Online]. Available: <http://www.zenit.org/english/visualizza.phtml?sid=86571>.

<sup>15</sup>This point was made to me by Ray Campbell and I would like to acknowledge my continuing discussion with him on the embryo transfer topic as contributing to the development of my arguments on the matter.

Should the man and woman not be the genetic parents of the child (which is assumed to be the most likely scenario unless *both* the genetic parents, utilizing the artificial procedures in the first place that helped create the frozen embryo, experience a change of heart and mind in relation to the practice), an imbalance occurs between husband and wife because the man assumes *only* a social fathering role whereas the woman assumes in part biological motherhood as well as a social mothering role. Meanwhile the child experiences another rupture in its kinship and dignity. Not only has the child's dignity been offended by its conception outside the conjugal union of its genetic parents, it must now endure further non-conjugal processes in order to be gestated. In order to be brought to birth, the child will either have to undergo continuation of the artificial means of its procreation, or it will assume a biological and a social relationship with a woman who will become its gestational mother different from its genetic mother without a similar biological relationship with a man who would act as its social father. The moral relationship of the child with its genetic parents is already fractured (because conception took place outside the conjugal act) and now the child will be subject to further radical fracturing of the nuptial stages of his or her life.

While embryo transfer might allow for the child's survival (subject to successful gestational transfer), it is not in keeping with its human dignity and flourishing. While the lives of these frozen children are to be respected like any other human life and we should do everything possible to protect them and uphold them, the challenge is to do so in a morally permissible manner that will uphold the human dignity of all the parties involved. If the genetic parents did experience remorse concerning their recourse to artificial conception and the plight of their frozen children, the radical question is whether there is any moral ability for them to "right the wrong" and try to re-assume the nuptial stages of life for themselves and their children. If the nuptiality of life is correct, then the answer hangs on the definition of the conjugal act, the moral reality of what constitutes pregnancy, and the communion of persons involved among mother, father, and child.

### 3.2 *Seeking Pregnancy Outside the Conjugal Act*

It is my contention that the moral object of frozen embryo transfer is to "seek pregnancy *outside* the conjugal act." The moral object of the acting woman, what she is choosing here and now in the specific circumstance of frozen embryo transfer, is to achieve pregnancy. Seeking pregnancy is the choice, regardless of whether actual pregnancy is successful or not. Actual pregnancy is something beyond her, or the clinician's, direct control.

It is also important to highlight that I suggest the moral object of the acting woman is to seek pregnancy *outside*, as opposed to *without*, a conjugal act. The former choice places the acting woman in the position of knowingly removing any association between pregnancy and the conjugal act. The latter term involves the acting woman in a direct violation of the conjugal act because it implicitly recognizes an association between pregnancy and the conjugal act.

This is an important distinction and coincides with the point just made about the ability of a woman to achieve actual pregnancy. The acting woman can seek pregnancy by having herself implanted with the embryo, but she can never actually achieve pregnancy given that it requires cooperation with the creative power of God. While she may in a sense provide the necessary conditions for pregnancy through implantation, she is not able to guarantee that pregnancy will be successful. As with the natural manner of becoming pregnant, all she can do is to choose to do the necessary things to make life possible but she cannot choose pregnancy in the sense of controlling the resulting life of the child achieved through the “two in one flesh” union with a husband. What is critical is that pregnancy can therefore never be morally made an isolated human act completely divorced from the conjugal act. To attempt to do so ruptures the language of the body and attempts to turn an act of man (i.e., a human biological process involving no voluntary decision on the part of an agent) into a human act (i.e., a volitional act involving the moral order) divorced from its principal cause, that is, the conjugal act.

### 3.3 *Does the Conjugal Act End at Conception/Fertilization?*

Proponents in favour of frozen embryo transfer specifically focus on the fact that conception of the babies has already taken place. They cannot determine a moral link between gestational and genetic motherhood that warrants inclusion of pregnancy as part of the conjugal act. Accordingly, they propose that arguments cannot be sustained that suggest frozen embryo transfer of fends the goods of marriage or represents an infidelity against the conjugal act. As they read the CDF Instruction, the intrinsic bond of the unitive and procreative dimensions to the conjugal act does not apply in the same way after conception/fertilization. The child now exists and thus there is no moral difference between gestational motherhood and adoptive motherhood. As Brugger (2005, p. 101) puts it, there is failure on the part of frozen embryo transfer detractors to show how “the place and purpose of pregnancy in marriage and procreation give rise to an irrevocable negative norm, which excludes a woman’s becoming pregnant outside of the context of the conjugal act.”

May (2005, p. 54) explains this logic by using the examples of fornication and adultery to demonstrate that it is not intrinsically evil for a woman to allow herself to become pregnant; in actual fact she is obliged not to contracept but rather to nurture in her womb any child who might be conceived as a result of her act of fornication or adultery.

Let us stop here. Already May has made a fatal error in his own logic in pointing to contraception as it relates to the *conception* of the child (or attempted prevention thereof) and not necessarily to *pregnancy* (abortifacient contraception notwithstanding). We must go to the minute choice of pregnancy if we are to accurately assess its moral significance with the conjugal act. Under the May framework, a woman fornicating or committing adultery thus only commits sin to the extent she conceives, as it is the unbundling of the unitive and procreative

dimensions associated with *conception*, according to May and fellow proponents, which offends against the conjugal act and against marriage.

When placed in this framework, pregnancy becomes a separate matter of moral choice for the woman. Pregnancy is no longer morally associated with the conception of a child. This places the onus back onto Brugger and May to establish the morality of pregnancy as a separate moral choice. If it is not immoral for a woman to carry a baby to term, is she morally bound to gestate or give birth to the child? If May and Brugger are correct and gestational motherhood is not part of the conjugal act, a woman faces a number of morally permissible options in all circumstances, regardless of whether the child is a frozen embryo or is conceived as a result of an act of intercourse, whether in or outside of marriage. While she morally cannot abort the child, she can presumably morally choose (given the absence of any moral association with marital fidelity and the conjugal act) to relinquish the gestation of the child to another woman (an “adopting mother”). Another woman choosing to impregnate herself could morally “adopt” this child and become its mother, or at least could take over the role of gestational mother should the genetic mother decide not to carry the baby to term (e.g., in cases of rape or in cases where the genetic mother is unmarried and decides it would be best to adopt out the child at this point rather than herself having to undertake gestation).

#### 4 The Morality of Parental Status

The interesting point associated with May’s example is whether the fornicating or adulterous woman is a mother and whether the fornicating or adulterous man contributing the masculine requirement towards conception is a father. In biological terms, there is no doubt that this is the case. In moral terms, however, does their lack of marriage mean the absence of moral paternity and moral maternity? The answer is both yes and no. On the one hand there is a moral indebtedness to the child resulting from the man and woman bringing the child into the world and a change in the status of the man and the woman who have become actual parents. However, the moral *fullness* of motherhood and fatherhood is denied due to the absence of the good of marriage. In this way the rupture of nuptiality not only detracts from the fullness of parental status of both the man and woman but also offensively fractures the dignity of the child, denying it of its fundamental human right to be “conceived, carried in the womb, brought into the world, and brought up within marriage” (CDF, 1987, II.A, no. 1).

Saying the principled conclusion only applies to conception results in perverse multiplication of maternity and paternity where there can be a multiple of genetic, gestational, birth, and social mothers (and also fathers) who, at one and the same time, both are and are not mothers and fathers of the same child. If we divorce birth and pregnancy from genetic motherhood and if we divorce pregnancy from the conjugal act, parenthood becomes alienated from human procreation. As noted earlier, this creates a range of imbalances – both material and spiritual – between



father, mother, and child; metaphysical ruptures that pose very real threats to human dignity and flourishing.

For May's argument to work, human generation becomes merely a matter of conception and no more. Taken to its logical and ruthless extreme, his argument applies the notion of reproduction to pregnancy so that its sacred content is spilled onto the technical laboratory floor.

Pregnancy is thus separated from sexual union and no longer requires it; pregnancy stands in isolation within a woman's body either as a mere biological function, or as a morally separate choice, in no way associated with the conjugal act. A baby traveling down the fallopian tubes, implanting itself in the endometrium and gestating for a period of up to 9 months is something separate from any moral decision to have sexual intercourse. Saying the conjugal act finishes at conception means pregnancy, nurture, and birth have morally nothing to do with the conjugal act but are separate moral choices. What is going on within the woman's body is at the same time both the result of a sacred genital touch, referred to as the conjugal act, and something quite separate from that act.

It is this rupturing of something that should be taking place within a woman's body that is such a violation of chastity. The violation of both the man's and woman's sexual integrity that occurs in conceiving the frozen embryos appears to be carried on through the implantation process associated with embryo transfer. This violation is also highly offensive to the child's dignity. Already, various governments throughout the world have noted the gross immorality associated with human cloning and the violation of human dignity that is associated with such a practice. A significant reason for the affront associated with the suggestion and practice of cloning is related to the right of human beings to be

[C]onceived, carried in the womb, brought into the world, and brought up within marriage. [As] it is through the secure and recognized relationship to his own parents that the child can discover his own identity and achieve his own proper human development. (CDF, 1987, II.A, no. 1)

#### 4.1 *The Meaning of Procreation*

May (2006, p. 56) states that in the case of frozen embryo transfer:

[P]rocreation is definitely *not* involved. The child has already been conceived; i.e., procreated in vitro. The woman who has the orphaned frozen embryo transferred to her womb to nurture it there is *not* engaged in *procreating*.

I would dispute this claim – not because I disagree with the entirety of May's statement, but because I disagree with the moral logic which flows from his statement.

Clarification in terminology is required upfront. de Marco (1991, p. 23) explains that human beings do not “replicate” as cells do (such that the parent cell “disappears” because it is assimilated into the very substance of the offspring), or “reproduce” like machines (such that the reproducer and the things reproduced are always external to each other), or “create,” as God does (where something is brought into

being from nothing). Procreation is the proper term to use. Procreation is not creation because it begins with something, namely the sex cells. It is not reproduction because there is an intimate relationship between parents and offspring. Nor is it replication, because the progenitors retain their identity as parent after their progeny has been conceived.

Thus the case is powerfully made as to why *reproduction* (which separates love from power and involves “making” babies based on desire and treating them like products rather than as subjects who are persons) is different from *procreation* (which never separates love from power and involves “begetting” babies based on treating them as gifts who are personal subjects interpersonally related to their parents).

Asci (2002, p. 261) elaborates this point further when he defines procreation to extend beyond conception. He defines procreation as man’s cooperation with the creative love of God. We can only appreciate the full theology of the body and the nuptial mystery embedded in our human sexuality by viewing procreation in this way. It is perhaps for this reason that *Donum Vitae* discusses respect for human life by referring to “artificial interventions on life as it originates and on the *processes of procreation*” (CDF, 1987, Intro., no. 1).<sup>16</sup> By way of explaining the point, Asci gives the cases of pregnancy through rape and the sterility of a married couple. For the former, even though there is conception, there is no procreation because there is no loving union between rapist and victim. For the latter, there is procreation, despite there being no conception, because the loving union is there, along with the willing cooperation with the creative love of God.

For Asci, therefore, neither genital encounter per se, nor conception, nor pregnancy, suffices for the conjugal act. To be truly personal and sacramental, genital encounter, conception, and pregnancy must be inseparably procreative and unitive, and it is this openness to inseparable procreation and union within the marital covenant that has to be chosen. In the biological and moral order, a human being cannot actually choose conception and pregnancy, but only the conditions for such. What a human being can choose is inseparable union and procreation in true genital encounter. It is the everlasting openness to inseparable procreation and union within the marital covenant that gives the conjugal act (which Asci, 2002, p. 282) describes as resulting from “a genital encounter of a man and woman who express their love by the intention to procreate and unite in and through the bodily manifestations of their masculinity and femininity”) its moral order.

This moral connection between procreation and spousal union within the setting of willing cooperation with the creative love of God is of an exceptionless nature. Procreation and union of their very natures are connected and inseparable because of the substantial unity of the human person (Asci, 2002, p. 262). To violate that unity is to set oneself up against the creative love of God and the plan He has for human love and sexuality. While it is humanly possible to do so, the point is that it is not moral to do so.

---

<sup>16</sup> Emphasis original.

Accordingly, the strictness of May's statement stands correct. The woman choosing embryo transfer is not *procreating*. She is, in a sense, attempting to procreate, but she cannot truly do so in the fullness of what procreation means. The only moral way she can do so is for her and her husband to have inseparable procreative and unitive genital encounter. By choosing embryo transfer she is, in fact, seeking pregnancy outside the conjugal act.

## 4.2 *Conjugal, Parental, and Familial Love*

It is in their bodies and through their bodies that spouses consummate their marriage (CDF, 1987, II.4B). The bodyliness of femininity and masculinity is absolutely fundamental to the morality of marriage and its expression through conjugal love.

The intrinsic connection of the unitive and procreative dimensions to the conjugal act extends, of course, across the whole of the marital covenant. However, there is a particular significance and potency to the procreative activity of the spousal bodies that merits enhanced moral attention.

The spousal bodies of man and woman operate as a complementary unit and they hold different capacities and play different roles. Louis Bouyer explains the complementarity and difference in theological terms, highlighting with particular care the virginal aspect of male and female bodies in terms of their procreative capacities. For man, according to Bouyer (1979, p. 34), procreative activity might be viewed as being a transmitter of the creative initiative which "remains purely divine." For woman, on the other hand, her physical integrity is such that she carries within her, even potentially, the fullness of human development.

Man is the one who sets in motion what the woman carries within her. Yet, man is the "bearer" or "transmitter" of paternity much more than its cause. Man exercises, what Bouyer (1979, p. 52) calls a "momentary, radically incomplete paternity," because he is reliant on both God and woman. Bouyer (1979, p. 52) states:

The realization or completion of paternity, in fact, always operates outside himself, in the womb of the woman, whereas the source, by which fatherhood defines itself, remains beyond him, in God alone, man being in this aspect simply a channel.

In woman, however, creaturely activity appears in a fulsome manner *within* her in that she surrenders, grows and completes herself – as well as her husband – by procreating within herself a being who has yet to become separate or alien to her (i.e., their child). For Bouyer, the woman in the order of created being represents the goal, the achievement and the totality. It is only in the body of the woman, in the created order, where presence to self and presence to others, can become one. As John Paul II (1988, no. 29) has stated, "In God's eternal plan, woman is the one in whom the order of love in the created world of persons takes first root."

What flows significantly from this reality is that it is within the body of the woman – in the conjugal act, if pregnancy is considered to be part of the conjugal act – that the child and the father are radically connected. According to John Paul II (1997, p. 128), it is the specific role of the husband in conjugal union to be the

“guardian of the reciprocity of donation and its true balance. ” According to my discussion of the nuptial stages of life and the contention that pre gnancy is part of the conjugal act, the man performs this role in and through the body of the woman. The bodily contribution of the father assumes fleshness in the body of the child. While the child is gestating within the woman, the father’s conjugal contribution and his *actual* paternity remains intact and is sustained and develops. He is absolutely reliant on the woman (his wife) to bring the fruit of their conjugal union to birth (i.e., what I have defined as independently sustainable existence outside the body of a woman).

Meanwhile, the child bodily interacts with the mother as the fruit of conjugal union and thus expresses this conjugal union – in a sense – on behalf of the father. The child and the father need one another within the body of the woman if conjugal (directed toward husband and wife with capacity for invoking new life), parental (directed by mother and father towards that new life that emerges as the fruit of conjugal love), and familial love (directed between children as well as with their parents), is to be expressed.

The mother, in the meantime, needs the father’s conjugal contribution, as well as the expression of that contribution who is the child, if her procreative contribution is to flower into the fullness of motherhood. The communion of persons is complete. They all gift each other and require each other if they are to receive the fullness of what each is and if the fullness of fatherhood, motherhood, and childhood is to play its fitting place in society at the close of the intimate conjugal union that saw each of these persons assume their respective roles. As de Rosa (2005, p. 62) puts it, “God has established that the marital act be the cause of pre gnancy.” It is only when this happens – and thus why pre gnancy is normally an act of man rather than a human act – that the communion of persons and human dignity and flourishing is promoted. In this way the common good is also thus upheld.

The only reason adoption becomes morally possible (even if less than preferable) is because the three protagonists – child, mother, and father – are all independently sustainable human beings. No two-in-one-flesh union is *directly* affected by social adoption. While there is a huge literature on the psychological implications associated with social adoption that render its perfection different from that of genetic kinship, especially, but not exclusively, from the perspective of the child,<sup>17</sup> the bodies of the parties are not intimately united to each other in a way that creates moral impermissibility. Embryo transfer is different from social adoption because it is a different type of act. Embryo transfer is the type of act that seeks to make a woman pregnant. Social adoption is not such an act; it is the establishment of a particular commitment to a child that has been born that should only be undertaken

---

<sup>17</sup> See for example, M. Reitz & K.W. Watson (1992). *Adoption and the Family System: Strategies for Treatment*. New York: Guildford; Bastard Nation (2005). *Bastard Nation: The Adoptee Rights Organization* [Online]. Available: <http://www.bastards.org/>; First Moms Action Group (2005). *Birthmothers.info* [Online]. Available: <http://www.birthmothers.info/>; Origins Inc. (2006). *Adoption Australia* [Online]. Available: <http://www.angelfire.com/or/originsnsw/>.

in very specific circumstances, notably the death of the parents or unrectifiable conditions where parents and child will harm each other should they stay in contact. The conjugal union and communion of persons achieved in the *bodies* of genetically bonded mother, father, and child are not marred through social adoption.

Can the same be said of frozen embryo transfer? The discussion in this chapter suggests not. Embryo transfer does involve expression through the bodies of the woman and child in a way that mars their own (because it is lacking the father as well as rupturing their own nuptial integrity), as well as the man's personal gift of self (because he is not a party to it in the same bodily, or moral, way).

The particular case to be examined with more detail is that of the genetic parents of the frozen embryo who have remorse for their use of artificial conception and want to "right the wrong" of such practice (not because of its "artificiality," but because of its moral affront to the theology of the body and nuptiality of the human person) by resuming the nuptial stages of life for themselves and their children. Is it morally possible for them to do so?

On the one hand, they would not be rupturing the biological and emotional and spiritual kinship with their child but would be showing heroic effort in trying to support such continuity and to demonstrate their parental responsibilities to the child who they have offended through their recourse to artificial conception practices. Consistent with this line of argument is the suggestion that the genetic mother is already "pregnant" in moral or emotional terms and that what is critically missing is the bodily pregnancy which embryo transfer can rectify. According to this logic, embryo transfer is a way of realigning the continuity in genetic, gestational and social parenting that is morally supportive of the child's dignity.<sup>18</sup>

On the other hand, if pregnancy is part of the conjugal act, the problem remains that the genetic parents are seeking pregnancy outside the conjugal act. Such a choice is morally wrong and offensive to their own as well as their child's human dignity, because the particular way in which they are seeking the fullness of motherhood and fatherhood is not as a direct result of a conjugal act, but something outside it. Indeed, this is consistent with why the practice of IVF is so strongly rejected as immoral in the first place. Furthermore, the suggestion that the woman is already "pregnant" in emotional or moral terms is something of a dualist perspective that cannot be sustained. While bodily realignment of the spousal and parent-child relationships is indeed desirable and morally laudable within the conjugal act, the moral problem lies in the act of trying to achieve such realignment. In fact, once the unitive and procreative dimensions to the conjugal act are separated through IVF, the separation remains irreparable because the conjugal act is a morally unified act in which conception and gestation are morally meant to occur through and within a woman's body if dignity and communion are to be achieved for all parties.

---

<sup>18</sup> I would like to acknowledge my ongoing discussion and debates with Joanna Rose as contributing to, and clarifying, my thinking on the morality of embryo transfer. I note especially, however, that she does not agree with the entirety of my conclusions and this particular argument reflects something of her line of reasoning.

The type of immoral “dominion” and “domination” over children that occurs with artificial reproductive technology that is mentioned in *Donum Vitae*<sup>19</sup> would be continued should the genetic parents attempt embryo transfer. True love is not served.

Nor can the case of a genetic mother seeking embryo transfer be compared with that of a pregnant genetic mother who, for medical reasons to treat a pathology, requires the temporary removal and re-implantation of her baby in her womb. The woman choosing embryo transfer is seeking pregnancy whereas the other woman is *already* pregnant. The clinician in one case is involved in an act that is making the woman pregnant whereas in the other case the doctor is medically treating an already pregnant woman and her child. The doctor is serving and honouring the conjugal union of the genetic parents whereas in the case of embryo transfer the clinician is attempting to determine its fate.

Such a conclusion regarding the moral impossibility of genetic parents “righting the wrong,” done to their frozen children presents an appalling tragedy and a seemingly callous view of human life. Surely these children should not be sacrificed because of the wrong choice of their parents, and society, who consented to the immorally artificial means of their conception? Surely they have already suffered an abomination in terms of the affront to their dignity that deserves restitution?

### 4.3 Assault on Childhood

Regardless of the circumstances in which they are conceived, my discussion of procreation and the conjugal act in no way denigrates the reality that children come to be from the moment of conception and that they are deserving of the dignity and respect owing to every human being. By elaborating on definitions of procreation and the conjugal act, detractors from embryo transfer are attempting to get to the heart of the morality of the human action at stake.

Of course these frozen embryos are full human beings, albeit at a very early stage of development. Of course they are deserving of the fullest of human dignity. They are not any less human because they have not yet been born. They are not any less human or any less moral because of the circumstances of their conception.

The problem for the children is that they have nowhere to turn. Trapped as they are in cryopreservation, their lives are literally caught in stasis and we, as a society

---

<sup>19</sup>See for example, when speaking of fertilization, *Donum vitae* (1987, II.B., no. 4.c) states: “No one may subject the coming of a child into the world to conditions of technical efficiency which are to be evaluated according to standards of control and dominion.” “Such fertilization entrusts the life and identity of the embryo into the power of doctors and biologists and establishes the domination of technology over the origin and destiny of the human person. Such a relationship of domination is in itself contrary to the dignity and equality that must be common to parents and children” (1987, II.B., no. 5).

let alone the parents and clinicians directly responsible for their care, are morally offending them by keeping them in this state. To release them from this frozen chamber would allow them the fullness of their life, but they would quickly die unless and until the gestational nutritional of a woman's body or an artificial womb is supplied.

On the basis of my argument here, there is no morally permissible way that a woman's body can be provided that upholds the human dignity of the child, man, and woman involved. For example, in this volume Kaczor discusses the morality of artificial wombs. Given the unlikelyhood of artificial wombs being able to be made without further moral violations to embryos (because they would involve an offensive and immoral utilitarian ethic that must be prohibited), coupled with the violation of human dignity that is associated with recourse to such a practice, especially for the child (whose dignity warrants the "home" of a woman's body as its sustaining "cradle" until birth), I cannot see this a venue to be morally licit, either.

The point I wish to make clear, here, is the difference between life and birth. Strange, and perhaps callous, as it may sound, we do have the means to give these frozen children the fullness of their life at this stage in their development. That is, we can release them from their cryopreserved state by replacing the cryoprotectant with the original level of water in the embryo, thereby allowing it to thaw. While this may have the *indirect* effect of death for the embryos (in the absence of gestational nutrition), such a choice is a life-giving one for the embryos, albeit for a very brief period of time. What we cannot seemingly do, in any morally permissible way, is to give them a chance of birth (i.e., independently sustainable life outside a woman's body).

Is this an abrogation of our responsibility to every human being to promote and protect life and human dignity as others such as Brown and Eberl and Brakman in this volume have argued? No. As with any baby that dies before birth, we reverence and uphold their life as unique, special, and worthy of the fullness of human dignity. Indeed it is because they deserve our respect as full human beings that moral principles be applied in their situation and that we do not violate other moral principles in our efforts to give them birth, a fundamental human right that they deserve.

Viewing pregnancy as part of the conjugal act appears consistent with the demands of *Donum Vitae* (1987, II.B, no. 7) that apply to clinicians and medical practitioners. It states:

*Medicine which seeks to be ordered to the integral good of the person must respect the specifically human values of sexuality. The doctor is at the service of persons and of human procreation. He does not have the authority to dispose of them or to decide their fate. A medical intervention respects the dignity of persons when it seeks to assist the conjugal act either in order to facilitate its performance or in order to enable it to achieve its objective once it has been normally performed. On the other hand, it sometimes happens that a medical procedure technologically replaces the conjugal act in order to obtain a procreation which is neither its result nor its fruit. In this case the medical act is not, as it should be, at the service of conjugal union but rather appropriates to itself the procreative function and thus contradicts the dignity and the inalienable rights of the spouses and of the child to be born [original emphasis]. The humanization of medicine, which is insisted upon today by everyone, requires respect for the integral dignity of the human person first of all in the act and at the moment in which the spouses transmit life to a new person.*

In the case of embryo transfer, the clinical act could easily be viewed as appropriating to itself the procreative function that should be occurring by way of genital encounter, thus denying spousal rights and the child's right to be born through, and as a result of, conjugal union. It is because of the intervention of the clinician in the first place, at the point of conception, that a replacement or substitution of the conjugal act has already occurred (and continues to occur with embryo transfer) and which denies the genetic parents their desire to "right the wrong" of their action in this circumstance.

## 5 Conclusion

Activists against artificial reproductive technology highlight how too much emphasis can be given to the biological or corporeal means of initiating and nurturing new life to the neglect of spiritual parenthood and childhood.<sup>20</sup> Yet in the rush to uphold human dignity we cannot forget that humans are a unified totality of corporeal–spiritual reality and that to in any way rupture this integration is to deny human beings of their humanity. Too little emphasis on the body is as troublesome as too much.

The sexual body of the woman, whose very being so uniquely embodies life and love, is the location of communion, fulfillment and flourishing of husband, wife and child. The fact that conception/fertilization and gestation takes place within the body of the woman is a significant moral reality. As with conception/fertilization, pregnancy is not a mere organ donation. It effects a profound metaphysical change in the woman, the man, and the child. While conception/fertilization grants life to the child and makes the woman and man parents, pregnancy is part of the procreative process because it *uniquely*:

1. Develops the woman as a mother
2. Sustains and develops the life of the child
3. Sustains the paternity of the father

The theology of the body embedded in the nuptial stages of life argues that I have proposed in this chapter is one that supports human dignity by being personalistic and relational where all parties are treated as subjects (and not objects) in their own right while being in communion. The underlying theology of the body associated with arguments that divorce pregnancy from the conjugal act runs the risk of marring this nuptiality.

The particular way that a woman becomes pregnant is not a matter of mere choice, devoid of moral meaning. It holds fundamental implications for herself, her husband and her child. Bearing and giving birth to babies without sex is as significant

---

<sup>20</sup>See D. de Marco (1991). *Biotechnology and the Assault of Parenthood* (p. 56). San Francisco, CA: Ignatius.



as conceiving babies without sex. The moral gaps made between spouses and between parents and child are so wide and so fraught that grave harm is caused, radical alienation is purposefully chosen, and exploitation eventuates. Already this generation of frozen children is being denied their fundamental human dignity and rights by being cryopreserved; their lives trapped in suspended animation. By allowing artificial reproductive technology practices, society has failed them as well as the parents who utilize the system in an unbridled desire for children at any cost. Just as this is a system that does not promote human dignity, so too can pursuing pregnancy and birth at all costs be viewed as not necessarily serving the dignity of these frozen children or their parents.

## References

- Althaus, C. (2005). 'Can one "Rescue" a human embryo?' *The National Catholic Bioethics Quarterly*, 5, 113–141.
- Asci, D.P. (2002). *The Conjugal Act as a Personal Act*. San Francisco, CA: Ignatius.
- Bastard Nation (2005). *Bastard Nation: The Adoptee Rights Organization* [Online]. Available: <http://www.bastards.org/>.
- Bouyer, L. (1979). *Woman in the Church*. San Francisco, CA: Ignatius.
- Brugger, E.C. (2005). 'In defense of transferring heterologous embryos,' *National Catholic Bioethics Quarterly*, 5, 95–112.
- Congregation for the Doctrine of the Faith (1987). *Donum Vitae (Instruction on Respect for Human Life in Its Origin and on the Dignity of Procreation: Replies to Certain Questions of the Day)* [Online]. Available: [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_19870222\\_respect-for-human-life\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19870222_respect-for-human-life_en.html).
- de Marco, D. (1991). *Biotechnology and the Assault of Parenthood*. San Francisco, CA: Ignatius.
- de Rosa, F.M. (2005). 'The transfer of abandoned frozen embryos: Identifying the object of the act,' *The National Catholic Bioethics Quarterly*, 5, 59–62.
- Dorland's Illustrated Medical Dictionary*, 29th edition (2000). Philadelphia, PA: W.B. Saunders.
- First Moms Action Group (2005). *Birthmothers.info* [Online]. Available: <http://www.birthmothers.info>.
- John Paul II (1988). *Mulieris Dignitatem* [Online]. Available: [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/apost\\_letters/documents/hf\\_jp-ii\\_apl\\_15081988\\_mulieris-dignitatem\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/apost_letters/documents/hf_jp-ii_apl_15081988_mulieris-dignitatem_en.html).
- John Paul II (1997). *The Theology of the Body: Human Love in the Divine Plan*. Boston, MA: Pauline Books and Media.
- May, W.E. (2005). 'On "Rescuing" frozen embryos: Why the decision to do so is moral,' *The National Catholic Bioethics Quarterly*, 5, 51–57.
- National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (1997) [Online]. Available: [http://www.hreoc.gov.au/pdf/social\\_justice/submissions\\_un\\_hr\\_committee/6\\_stolen\\_generations.pdf](http://www.hreoc.gov.au/pdf/social_justice/submissions_un_hr_committee/6_stolen_generations.pdf).
- Origins Inc. (2006). *Adoption Australia* [Online]. Available: <http://www.angelfire.com/or/originsnsw/>.
- Reitz, M. & Watson, K.W. (1992). *Adoption and the Family System: Strategies for Treatment*. New York: Guildford.
- Rose, J. (forthcoming). *The Ethics of Sperm Donation Practices: The Moral and Social Significance of Biological Relatedness for the Offspring*, unpublished Ph.D. thesis, Queensland University of Technology, Brisbane.

- Russell, J.F. (2007). *St Therese and Spiritual Childhood* [Online]. Available: <http://www.little-flower.org/learn/reflect/frjrspiritalchildhood.asp>.
- Saward, J. (1999). *The Way of the Lamb: The Spirit of Childhood and the End of the Age*. Edinburgh: T&T Clark.
- Schaffer, K. (2002). 'Getting over the genocide question: Australia and the Stolen Generations Debate,' *Borderlands e-journal* [Online]. Available: [http://www.borderlandsejournal.adelaide.edu.au/vol1no2\\_2002/schaffer\\_getting.html](http://www.borderlandsejournal.adelaide.edu.au/vol1no2_2002/schaffer_getting.html).
- Sheed, F.J. (1957). *Theology for Beginners*. London: Sheed & Ward.
- Watt, H. (1999). Part 2 of 'Are there any circumstances in which it would be morally admirable for a woman to seek to have an orphan embryo implanted in her womb?' in L. Gormally (Ed.), *Issues for a Catholic Bioethic: Proceedings of the International Conference to Celebrate the Twentieth Anniversary of the Foundation of The Linacre Centre, 28–31 July 1997* (pp. 347–352). London: The Linacre Centre.
- Willke, J.C. & Willke, B.H. (1997). 'The human embryo,' in *Why Can't We Love Them Both: Questions and Answers about Abortion*. Cincinnati, OH: Hayes Publishing [Online]. Available: <http://www.catholic.net/rcc/loveboth/chapter11.html>.
- Zenit (2006). *Catholic Charities and Gay Adoption: Father Roger Landry on the Conflict in Massachusetts* [Online]. Available: <http://www.zenit.org/english/visualizza.phtml?sid=86571>.

# On the Moral Objectionability of Human Embryo Adoption

Reverend Tadeusz Pacholczyk

The disposition of abandoned frozen embryos remains a topic of intense discussion as pressure to sanction human embryonic destruction for stem cell research continues to build. Debates about “embryo adoption” have intensified as part of this discussion. A number of children have been born this way, and their presence serves to vividly remind us that each frozen embryo is not an anonymous grouping of cells, but a child with his or her own specific traits. These children also remind us how “unwanted” or “abandoned” embryos can be given other possible trajectories besides being discarded or destroyed for research. My aim in this paper, nonetheless, is to offer several interconnected reasons I believe embryo adoption is illicit and unlikely ever to be sanctioned by the Catholic Church. I also intend to briefly consider the related question of the fate of the many cryopreserved embryos currently in storage.

The core question under consideration revolves around the final step typically undertaken during the in vitro fertilization (IVF) process, and whether that step of transferring an embryo into a woman’s uterus is morally licit. Some such as Tollefsen and Brown and Eberl in this volume, would argue that embryo transfer as part of the in vitro fertilization process is wrong, but not when it is carried out as a form of “rescue” or “adoption.” I believe such a view is internally inconsistent and will attempt to argue in this paper that embryo transfer of any kind involves the participants in a fundamentally disordered kind of action. The process of deriving moral conclusions can be complicated by the fact that grave and systematic violations of the moral law may have already preceded and conditioned the situation. We find ourselves today in the strikingly unnatural situation of routinely handling human embryos in a sterile laboratory setting, far removed from a woman’s womb. As a consequence, we have seen tremendous depersonalizing and objectifying forces skew the discussion about early embryonic life. It has become nearly routine to see scanning electron micrographs of early human embryos sitting on the point of a sewing pin, or being poked with micromanipulators.

---

This chapter is based on works previously published: T. Pacholczyk (2006). ‘Some Moral Contradictions to Embryo Adoption,’ in T. V. Berg & E.J. Furton (Eds.), *Human Embryo Adoption: Biotechnology, Marriage, and the Right to Life* (pp. 37–53). Philadelphia, PA and Thornwood, NY: The National Catholic Bioethics Center and The Westchester Institute for Ethics & the Human Person and T. Pacholczyk (2004). ‘Frozen Embryo Adoptions are Morally Objectionable,’ in K. Whitehead (Ed.), *The Catholic Citizen: Debating the Issues of Justice* (pp. 84–101). South Bend, IN: St. Augustine Press.

Fifty years ago such photos would have been unthinkable. Today we cannot avoid confronting the radically abnormal circumstances in which the human embryo has become inextricably lodged due to the IVF process. Eric Cohen, who often writes about issues of technology and society, offers some trenchant observations about the peculiarity of extracorporeal embryonic life:

How are we to reason rightly about the human embryo, especially the early stage embryo outside the human body so severed as it is from its natural human contacts? Yuval Levin in an essay in the first issue of the *New Atlantis* describes the dilemma as follows, 'We look at this creature that has been manufactured, molded, examined and up to a certain point developed under the lights of the laboratory. It is growing but can only grow so far without further biotechnical intervention. It is living but only because the scientists have created it artificially. It is human to the extent that our humanity is in our genes and our potential. It is useful as a resource for medical research but would develop into a mature human adult if implanted into the body of a woman and permitted to grow. What in the world are we supposed to do with this thing? How is ethics supposed to serve us in this circumstance?' (Cohen, 2003, p. 12)

We find ourselves faced with the unusual situation of asking moral questions dealing with a human embryo in a setting in which it does not really belong. We can see how there have been enormous boundary transgressions that have preceded many of these questions and have necessarily conditioned them. In dealing with the embryo in this new and entirely unnatural venue, the challenge of resolving ethical questions pertaining to embryo adoption becomes ever more vexing. Again from Eric Cohen,

With in vitro fertilization, we created human embryos outside the body by uniting sperm and egg in the laboratory, bringing the very earliest stages of embryonic development to new light. The significance of doing so is something that we have barely begun to fathom. It is a boundary that we crossed with little forethought and little reflection. It may turn out to be a profound turning point in the history of human life and culture. All the absurdity, all our dilemmas stem from this new reality. (Cohen, 2003, p. 11)

Hence we find ourselves grappling with completely novel questions like the permissibility of embryo adoption, which stem from previous and still widely unacknowledged errors of moral judgment. By dissociating the gametic generative powers of man and woman from the setting of marital intimacy, and transposing them into the setting of the laboratory, we find ourselves in unfamiliar terrain.

Even in such unfamiliar terrain, however, certain primary intuitions, I believe, can serve to orient and launch the discussion. Some time ago I had a conversation over dinner about embryo adoption with a married friend who is the father of six children. He has no formal background in bioethics, though he is a strong and devoted Catholic, and at one point in our conversation I asked him, "How would you feel if Janet were implanted with somebody else's frozen embryo?" He reflected on the question briefly, then responded, "She should get pregnant only through me." His answer struck me as touching on something vitally important to the discussion. On some level, he sensed a violation of the fundamental exclusivity that stands at the core of marriage, and perhaps of the meaning of his own fatherhood. His response spoke to the deep reality of marital exclusivity, and suggested that embryo adoption may involve a failure to respect the spousal orientation of the procreative gifts that are intrinsically tied to the marital state.

Along this same line of thinking, Caulfield refers to a penetrating comment from a Catholic woman to the effect that "opening her womb to a life produced by strangers

was not what she had in mind when she took her marriage vows” (Caulfield, 2001, p. 11). Her comment echoes this same intuition, namely, that on some level, a violation of both marriage and motherhood necessarily appears to take place in the case of heterologous embryo transfer (HET). I am convinced that these kinds of primary intuitions deserve further exploration to help unveil and explicate the fundamental moral objectionability of frozen embryo adoption.

When we consider the procreative powers of a man or of a woman, we must be precise about what it is that we are referencing. The procreative powers of the man include his male ejaculatory powers which may be invoked only by his wife through marital acts. These male procreative powers may be invoked exclusively by the female who is his spouse, precisely because, in complement to her, they are ordered and oriented towards opening her womb to new life. Any other modality of invoking these powers e.g., masturbation or artificial insemination, will be illicit. When we speak about the procreative powers of the woman, these include her ability to receive the seed, the ejaculatory gift of her spouse exclusively through a marital act, and to receive that gift in a way that is not intentionally closed to the possibility of its extended fruitfulness in pregnancy. These procreative powers of hers must be invoked exclusively by the male who is her spouse, precisely because in complement to him, they are ordered and oriented towards opening her womb to new life. Any other modality of invoking or impinging upon these powers of hers, e.g., artificial insemination or in vitro fertilization, will be illicit. The woman’s fruitfulness, her ability to become pregnant, is accessed or realized through this initiating moment of bodily sharing with her spouse. Embryo adoption indeed opens her womb to an embryo produced by strangers, and I would posit that such an action illicitly invokes her procreative powers apart from a marital act with her husband. My intent herein would be to assert that such an intentional and freely chosen action of embryo adoption, even by a married couple, represents an intrinsically disordered, or inherently evil kind of action, that is to say, an action that cannot ever be rendered morally licit, even by the extenuating circumstances that the embryo finds himself or herself in when cryopreserved and abandoned by his or her own parents. In other words, the desired outcome or end state is certainly good (i.e., the offering of life and growth to young humans trapped in liquid nitrogen) but the means chosen to realize those good ends involve grave violations of marriage, and are intrinsically problematic.

As an initial consideration, I would suggest that the proper mode for a woman to “open” herself to new life must always occur indirectly, that is to say, through the mediation of her husband. The wife does not “open her womb” directly to life, but opens her body up to her husband, and through this uniquely marital action, her womb is fittingly “unsealed” and rendered receptive to life. Implicit in the proposal of those who favor embryo adoption is the idea that a woman has the right to offer her body, or more specifically, her womb, to gestate an embryo. Yet I would argue that a woman does not really have this putative right to turn over her procreative powers to an extrinsic embryo in this way, since those powers do not in fact belong to her alone, or even to her and her husband alone, but to their marital union, the essential properties of which are outside the determination of the participants. Looked at from a theological perspective, married life in its procreative potential involves three: husband, wife and God, and the structure that God has written into

the bodies of the man and the woman and into their shared communion must objectively inform the analysis of the morality of embryo adoption.

Some authors have ventured to claim that embryo adoption has practically nothing to do with procreation. They argue that the embryo in the deep freeze represents a post-procreative reality, and that the “procreative step” occurred when sperm and egg were joined together in the clinic. I would like to suggest, however, that this notion of the procreative act as de facto completed in vitro is not correct. On the contrary, it would be more accurate to conclude that the procreative act has not really even begun when referring to the case of fertilization in vitro. IVF may be a *creative* act in the sense of creating something new, but it is not genuinely *procreative* because procreation in the full and proper sense always and uniquely derives from conjugal acts. In the final analysis, when speaking of IVF, one is referring to an *alternative* to the procreative act. I would argue that embryo adoption likewise involves an alternative kind of action from procreation, as the powers of procreation are partially engaged to achieve the pregnant state, apart from the concrete acts of marital intimacy which need to serve as the necessary precondition to that state.

The conjugal act thus achieves its procreative finality in a much broader context than what happens in a Petri dish when an embryo is mechanically produced. A proper understanding of the term “procreation” must extend well beyond the biological events of fertilization, and take into consideration the entire process of *pro*-creation, or that which is done “on behalf of” the creation of a new child through conjugal acts of self-giving love. In other words, a more expansive grasp of the process of procreation, which properly includes implantation, pregnancy and gestation, will necessarily be required if we are going to properly appreciate its total and integrated meaning.<sup>1</sup>

That total and integrated meaning implies that invoking the procreative powers of the woman’s body, *including the state of becoming pregnant*, is an action inherently and necessarily interwoven into the marital act. I believe this postulate can be grasped as an expression of the natural law, along with its normative implications for embryo adoption. There is a kind of “compactness” to the marital act, where many essential meanings are folded into it as an integral and unified whole. Yet we face a challenging social and cultural climate today where numerous separations and dissociations have become commonplace, if not reflexively accepted, in precisely this arena of marital sexuality. For example, the separation of the love-giving from the life-giving dimensions of marital sexuality through widespread contraceptive practices, not to mention premarital, extramarital, and non-marital forms of sexual activity, as well as the frequent dissociation of the procreative from the unitive in so many forms of assisted reproductive technologies – all of these instantiate and actualize a kind of “reification” of the human body, a strange distancing from ourselves, and a kind of disintegration that permeates our entire anthropological outlook. I believe that the difficulties many encounter in perceiving the state of pregnancy as necessarily connected to concrete marital acts is a further manifestation of this basic dissociating tendency and of the growing cultural objectification of the human body and its sexual powers.

---

<sup>1</sup> cf. Althaus (this volume).

To summarize the matter, then, we can note how there is a special kind of self-giving implied in a woman's fertility and in her nurturing capacity through pregnancy. Embryo adoption would appear to violate the language of a woman's body, because the very mode of self-giving written into her body is subverted as she dissociates pregnancy from marital self-donation. Her embodied feminine receptivity is reoriented and disturbed at a fundamental level in embryo adoption. This disruption by embryo transfer flows from a root-level violation of the nuptial meaning of her own body. A woman's unique feminine receptivity and her inner fruitfulness are inherently and necessarily relational, and they are relational in precisely a spousal or nuptial way. Concretely, this has the consequence that her inner fruitfulness is discernibly tied to the bodily and genital relation she uniquely shares with the man she has taken as her husband. Precisely because that fruitfulness is not ultimately her own, but is shared and defined by the spousal reality of two in one flesh, that fruitfulness may not be invoked by a lateral move like embryo adoption without violating the intrinsic nuptial reality of their one flesh union.

Perhaps we can seek to explain the same reality by using slightly different language. One can consider the process of embryo adoption to be a kind of "importation" of the embryo into a milieu that is not properly its own, in the sense that this particular uterus where it is now lodged artificially is not the uterus of its genetic mother. Following ET, the child grows as a discernibly "extrinsic reality" to the substance of the marital union, and in effect "enters the sanctuary" through a kind of back door violation. When the language of the body is respected in its fullness, on the other hand, there will be a critical sense in which the new life emanates (and gestates) from the very substance of the flesh of the mother and emanates (and gestates) from the flesh of the father, and hence from the one flesh union of both husband and wife. One might object that the gestation is only accomplished on the part of the mother, that she provides all the nutrients and raw materials for the embryo to be transformed into an infant, but there is a deeper and more important level in which this is not quite correct. The child growing in the womb consequent to a marital act is also gestated by its father's flesh, as it is the donation of his own "flesh" that sets in motion and causally upholds the gestational reality. The gestational reality in its proper and deep meaning is intrinsically connected with the father's flesh *as much as it is with the mother's*. It is for this reason that embryo adoption involves the participants in a kind of annulling of the essence of their marital bond and of their union in one flesh.

A challenge is occasionally raised as follows: if a woman is free to offer a kidney to save the life of another, should not she be able to offer her uterus in a type of donation to save the life of another? One difference, of course, is that uteri have an orientation towards individuals of the next generation, and in this way are distinct in character from other organs like hearts and livers that have an orientation towards individuals of the present generation, and towards their organismic continuity and homeostasis. This clear orientation of the reproductive organs towards the next generation implies the above-mentioned spousal "shared communion" in the woman's procreative powers. To reiterate, then, even husband and wife together are not fit to

make decisions that might invoke their procreative powers in ways that are dissociated with their intrinsic designs.

In a sense, then, a woman cannot “consent to pregnancy” directly. The state of being pregnant is not within her purview to directly consent to. Her consent is always indirect, because pregnancy is the seamless continuation of fertilization, to which she consents *indirectly* whenever she consents to sexual relations. The previous choice or decision on the part of the woman in the form of consensual sexual relations should always include the implied consent to become pregnant, so that pregnancy is ultimately an expression not only of her own fruitfulness, but also of the fruitfulness of her husband.

In terms of magisterial teaching, some hints of guiding principles for resolving these difficult questions may be discernible in *Gaudium et Spes*, the Second Vatican Council’s *Pastoral Constitution on the Church in the Modern World*. In paragraph 51, when discussing objective criteria governing decisions about married love and the transmission of life, reference is made to “criteria which respect the total meaning of mutual self-giving and human procreation” (Paul VI, 1965, no. 51, ed. Flannery) or in another translation, reference is made to objective standards that “preserve the full sense of mutual self-giving and human procreation” (Paul VI, 1965, no. 51).

While this passage from *Gaudium et Spes* was not written with the question of embryo adoption in mind, it seems to suggest a general insight pertaining to marital love and life: those actions which are compatible with married love and responsible procreation will integrally respect the “total meaning of mutual self-giving.” Actions that invoke or impinge upon married love and the transmission of life, but that prescind from, or otherwise attempt to circumvent, the total meaning of mutual self-giving inscribed within the conjugal act, are likely to be morally suspect.

In the case of the woman, she is capacitated to conceive and give birth to a child – capacitated to enter into the pregnant state – through conjugal acts with her husband. In his Apostolic Letter *Mulieris Dignitatem*, Pope John Paul II (1988, no. 18) noted how pregnancy is properly linked to the marital union and to the mutual self-giving of spouses:

In this openness, in conceiving and giving birth to a child, the woman ‘discovers herself through a sincere gift of self.’ The gift of interior readiness to accept the child and bring it into the world is linked to the marriage union, which should constitute a special moment in the mutual self-giving both by the woman and the man.

In various documents and teachings of the Church regarding the purposes of marriage and the marital act, one finds statements affirming that the principal end of marriage is the procreation and education of children. This phrase, “the procreation and education of children,” is found, for example, in *Casti Connubii*, when Pius XI (1932, no. 17) states,

[L]et us sum it all up by quoting once more the words of St. Augustine: ‘As regards the offspring it is provided that they should be gotten lovingly and educated religiously,’ – and this is also expressed succinctly in the Code of Canon Law – ‘The primary end of marriage is the procreation and the education of children.’



Clearly this notion of “the procreation and education of children” is key to any consideration of the meaning of conjugal love and of marriage itself.<sup>2</sup> On a first level of analysis, what is implied in the phrase “the procreation and education of children” is the idea that *birth identifies a significant boundary where procreation transitions into education, that is to say, birth is a threshold where something comes to an end and something else begins*. Broadly speaking, that which precedes the education of children would be “procreative” in character. This understanding of procreation as penetrating the various stages of early human life until birth, is thus distinct from, but complementary to, its counterpart – education – which commences at birth and extends a number of years thereafter, throughout a lifetime. One may argue that the lines can be blurred by considering, for example, that children in the womb can learn to respond to their parents’ voices, or to respond to music. This appears to be a form of “education” that happens before birth. Or some might argue that the baby in utero is responding to numerous chemical cues from the mother’s body, and therefore is involved in a process of learning and education before birth. Granting that in utero learning is possible, this does not affect the distinctiveness of the threshold that birth represents, where a newborn is no longer maternally enclosed in the procreative embrace, but has been ushered into the world of semi-autonomous, albeit still dependent, living.

St. Augustine, referenced in *Casti Connubii* above, describes the same reality in slightly different language by noting how children must be *begotten and educated*. The idea of *begetting* children seems to be essentially coterminous with the notion of procreation during much of the history of the discussion. Thus in speaking of *begetting* or *procreating children*, we are referring to something that extends well beyond the physical act of intercourse of husband and wife, well beyond the mere generation of an embryonic human. We refer to begetting or procreating children in the inclusive sense of the entire act of marital self-giving with its corresponding pregnancy and gestation, leading up to, and culminating in, the birth of a baby.

A proper understanding of human procreation or begetting thus needs to amply acknowledge the multifaceted character of the prenatal trajectory, extending out from and including the conjugal act, fertilization, implantation, pregnancy and birth. This is the way we beget children, the tried and true concept of procreation. Procreation in this broad context includes the inscribed intentionality of the conjugal act up to its implied finality at birth, and encompasses all the stages of pregnancy. Pregnancy should not be misconstrued as a kind of superaddition to procreation, an incidental form of nurturing or fostering which happens as a post-procreative reality; it is rather an integral and deeply expressive manifestation of human procreation itself.

---

<sup>2</sup>More contemporary treatments of this theme in Church documents shift the emphasis away from identifying the *primary* end of marriage, and instead stress a twofold end, namely *mutual help* (sanctification), and the *procreation and education of children*. These nuances complement and broaden the Church’s longstanding insistence on the importance of the *procreation and education of children* to marriage.

This understanding of procreation as a broad process that includes pre-gnancy does not imply in any way that women who miscarry do not procreate. If a woman conceives but only goes part way through the pre-gnancy before the child dies of natural causes, she undoubtedly was engaged in the beautiful human action of procreation; that vital procreative process, unfortunately, did not achieve its full and proper finality by coming to term in the birth of her child. Prior to the miscarriage, however, the couple certainly achieved another important finality, namely, that of engendering a new human being, a child of their own, deserving of full respect, esteem and love at all stages of his or her existence. In other words, their marital activity as a human action freely chosen was genuinely procreative in its fundamental nature and character, even though its concluding finality in terms of live childbirth was not actualized through no fault of their own.

Sometimes the argument is advanced that pre-gnancy is really a sophisticated form of nurturing and not a part of procreation. If we may nurture a child who is not our own through breastfeeding, should we not be able to nurture an embryo that is not our own through pregnancy? But pregnancy and breastfeeding are two very different kinds of nurturing. Pre-gnancy signals and embodies a unique and exclusive relational bond between mother and child, and is linked in a discernible way to the exclusive character of sexual self-giving between a man and a woman. Nursing a baby does not signal or embody that same unique relational exclusivity, since the procreative threshold of birth has now been crossed, and the baby's being out and away from his mother signals a new stage of availability for other relational encounters, including the encounter with other women who may serve as wet nurses. Drawing an analogy between the offering of one's uterus for embryo adoption to wet-nursing or other nurturing after birth "ultimately fails to recognize the radical interiority of 'two persons in one' that is pregnancy, a seamless continuation of fertilization, in which the child 'feeds on and inside the mother's very substance.'<sup>3</sup> So pregnancy is procreative and exclusive in its essential nature, while breastfeeding is not. In other words, pregnancy bespeaks the exclusive, relational language of human sexuality in a fundamentally different way than nursing does.

Often advocates of embryo adoption stress that this action represents a form of rescue, and that what is being pursued is the saving of a child's life. This can certainly be a key part of the total dynamics in a couple's decision to implant an abandoned embryo. Despite this noble intention, the moral evaluation of what they are doing – isolating one part of the procreative process from its totality – still needs to be made. It may also be worthwhile to inquire whether there might be, on some occasions, a disordered dynamic that is operative in the scenario of embryo adoption. Isn't there an important sense in which we are attempting to "secure a child" through embryo adoption, as an end or a goal? The basic structure of marital sexuality embodies a very different *telos*. What one is actually doing as a human act, on

---

<sup>3</sup>Thomas K. Nelson, M.D., personal communication, 2006.

a deeper level, nested within the marital bond, is not seeking a child as an end, but rather giving oneself in totality to one's spouse, donating one's inner being in an act of complete openness, surrender, and mutual abandonment of body and spirit. The inner meaning and language of sexuality and human procreation is essentially one of total self-giving, and only derivatively one of seeking or pursuing a baby. In other words, as *Donum Vitae* puts it, the spouses are meant to "cooperate as servants not as masters in the work of the Creator" (Congregation for the Doctrine of the Faith [CDF], 1987, II.A, no. 4.). Manually implanting embryos into uteri seems to invoke the manipulative dynamic of masters rather than servants within the delicate procreative arena of marriage, not unlike the dynamic which created the embryos in the first place through IVF. Serious concerns are thus raised by a procedure like embryo adoption that profoundly redirects, if not restructures, the sacred inner order of human procreation.

Pope Pius XII stresses the intrinsic connection between conjugal love and procreation when he condemns the pursuit of either of these two realities in isolation from the other. He puts it this way: "Never is it permissible to separate these different aspects so as to exclude positively either the aim of procreation or the conjugal relation" (Pius XII, 1956, p. 470). In the case of initiating a pregnancy through embryo transfer, one is systematically obviating the conjugal relation while pursuing a procreative aim or outcome. This pursuit of a procreative aim or outcome in strict separation from its required conjugal relation would seem to be incompatible with the inner order of marriage.

The restructuring of the inner order of human procreation that occurs during embryo adoption also has the effect of causing a profound "rupture" or "fissure" in parenthood. This fissure is introduced into both motherhood and fatherhood by virtue of the fact that embryo adoption fails fully to respect the exclusive nature of the couple's marital covenant and the exclusive reality implied by their conjugal union. A passage from the Congregation for the Doctrine of the Faith's 1987 document *Donum Vitae* stresses the profound exclusivity of parenthood in marriage: "The bond existing between husband and wife accords the spouses, in an objective and inalienable manner, the exclusive right to become mother and father solely through each other" (CDF, 1987, II.A, no. 2). In other words, it is only in and through marriage, and specifically through conjugal acts, that a man and a woman are each capacitated to become true father and true mother.

If traditional, post-natal adoption of an infant does not raise any moral problems, what is the key difference with embryo adoption that renders it morally problematic? In post-natal adoption, of course, a pregnancy is not involved. One is not violating any of the goods of procreation by adopting an already born child because nobody needs to become pregnant for such an adoption to occur. No one is required to invoke their own procreative powers or transgress the exclusive marital meaning of their own bodies in order to adopt an already born individual. In traditional adoptions, questions of procreation and the use of our procreative faculties do not enter into the mix in any essential way, and as a consequence, no violation of the procreative goods entrusted to us by God occurs. Hence no intrinsic moral objection is discernible in the decision to go through with a traditional adoption of an already-born baby.

In embryo adoption, on the other hand, the woman is pursuing the role of gestational mother without having conceived that embryo through conjugal union with her husband. This is in actuality the essence of surrogacy, understood broadly, which violates the goods of motherhood and the goods of procreation by implanting an embryo generated extracorporeally into one's uterus. Embryo adoption thus raises the problem of a woman's misuse of her procreative powers as she pursues a kind of surrogacy or "partial motherhood."

Surrogacy, in the final analysis, seems to be most essentially described by the decision of a woman to receive an embryo into her uterus in a way other than as a consequence of conjugal relations with her husband or with another man. If a woman commits adultery and becomes pregnant, this would not be an example of surrogacy, because the embryo conceived in the adulterous act came into being through an act of sexual intimacy rather than being created extrinsically and imported into her body. If a woman is raped and becomes pregnant, this also would not be an example of surrogacy, since the embryo again came into being through an act of (forced) sexual intimacy. Both adultery and rape are grave violations of the meaning of motherhood and fatherhood, but not because of the evil of surrogacy.

Surrogacy is sometimes argued to be intrinsically wrong because it can involve payment: a woman consents to gestate an embryo for a fee. It has been suggested that this kind of payment would comprise the essential evil of surrogacy. It has also been suggested that the idea of gestating an embryo on behalf of another person rather than for oneself constitutes the illicitness of surrogacy. In other words, it is the decision to gestate an embryo that one does not intend to raise as one's own child that would be morally problematic. Still others have suggested that the evil of surrogacy lies in gestating any non-genetically related embryo, while gestating an embryo that is genetically related (e.g., derived from IVF) would not constitute surrogacy, and might be licit. I would suggest, however, that surrogacy in its morally problematic dimension can be most aptly categorized and analyzed as the choice to receive an embryo *ab extra* into one's uterus, an embryo which is not the direct fruit of a particular act of sexual self-giving between a man and a woman. This seems to represent surrogacy at its most fundamental level.

In other words, a surrogate mother becomes such through an improper agent or means, through the persons or techniques involved in various reproductive technologies. One should not attempt to become a "mother" in any other semi- or pseudo-procreative manner; one should not make use of this special part of marital exclusivity outside of its proper and reserved context. In other words, we are obliged to respect the integrity of marriage and the way in which we are intended to invoke the procreative powers of our bodies. This should occur only in and through those exclusive acts of conjugal self-giving between husband and wife, which have pregnancy and birth as their natural outcome and finality.

The procreative expression on the part of the husband in marriage is much more limited than that available to his wife. This becomes especially apparent when considering embryo adoption, where a profound fissure is introduced into fatherhood. In the general scheme of marriage, under normal circumstances, the procreative

expression afforded the man is uniquely manifested in and through the conjugal act, since this is the principal manner in which he becomes a full participant and partner in the pregnancy and gestation of his child. In the case of embryo implantation, however, the man's inner connection to the gestating child through the conjugal act is systematically precluded. Under normal circumstances in married life, prior to the birth of a newborn, the father is incidental to practically everything except for the conjugal act itself, while his wife does all the "heavy lifting" of carrying the pregnancy. In the case of embryo adoption, meanwhile, the man becomes entirely incidental to the whole, 9-month long prenatal enterprise. His one, all-important link to the child and to his gestation has now been severed. In this foundational sense, both fatherhood and husbandry are gravely and intrinsically violated by the decision to adopt and implant a frozen embryo into his wife's uterus. His wife's involvement in this pseudo-procreative undertaking to the exclusion of his own participation, of course, does not mean that the child later born by embryo adoption would be any less his own than, say, an adopted child might be; rather, it means that the "use" of his wife as an "incubator" for a child unrelated to him represents a violation of his paternal rights and role regarding any offspring gestated by her.

The consequences of the line of reasoning summarized in this paper can be illuminated by considering a particular case where a husband and wife decide to advert to IVF in the face of apparent infertility. They show up at the infertility clinic one day to donate their gametes, their egg and sperm cells. The technicians join their gametes together, and place them in growth medium in a Petri dish. The couple returns home to allow the resultant embryos to grow for a few days. The wife then comes back to the clinic to have some of the embryos implanted. In the meantime, however, she had been thinking about what she and her husband had done earlier, leading her to the point of repenting of ever having generated the embryos in the first place. What should she do now? Should she allow the technician to implant the embryos into her or not? I believe that the morally proper step for her would be a rather radical one: to leave the clinic without implanting the embryos, even though they are in fact her own children. By this bold step, she would put the brakes on an intrinsically disordered chain of events that she and her husband had initiated, and avert a second evil act, namely, the act of becoming a surrogate mother to the couple's own embryos generated earlier at the clinic. Overall, then, I would argue that there is really a double violation that is discernible whenever one becomes pregnant through IVF, even if it involves homologous IVF (husband and wife using their own gametes, rather than the gametes of others). The first violation flows from allowing one's gametes to be used generatively outside of the conjugal act itself, by allowing conception outside the body and apart from the conjugal act. The second transgression occurs at the point of embryo transfer, by attempting to become a gestational mother without being properly capacitated for that role by a prior conjugal act. The woman, you could say, becomes a surrogate mother to her own genetically related offspring in homologous IVF.

Moreover, each one of these two violations that occur during in vitro fertilization, I would argue, represent *intrinsic* evils. In other words, they are disordered in such a way that no good end that might possibly be achieved could ever justify the

commission of these actions. Generally speaking, there are certain kinds of evils that are so profound and so internally disordered like the decision to commit adultery or to kill an innocent human being that they cannot ever be justified or chosen, no matter how good or desirable an outcome might accrue from that choice. I would argue that both heterologous or homologous embryo transfer constitute intrinsic evils, irredeemable's violations of marriage and the nuptial meaning of the body, and cannot therefore ever be licitly chosen.

The designs over motherhood and fatherhood as given to us by God always imply an act of total, mutual, and exclusive self-giving between spouses. This is inscribed within the structure of the conjugal act, which is that special and unique kind of human act that affords the necessary condition to capacitate a woman and a man to each become parents through the other. Any attempt to become a parent by invoking the procreative powers of their bodies outside the specific setting of committed marital intimacy represents a violation of the gift of their mutually committed sexuality and a violation of its intrinsic meaning as established by God in the beginning. Because embryo adoption would always involve the husband and wife in a transgression of this nature, I would conclude that it cannot be morally licit.

It should be mentioned that there are also very substantive counterarguments in the practical realm to embryo adoption. Specifically, there is the serious concern that standardizing the practice of adopting human embryos would encourage the production of more embryos in the future, because those very clinics where IVF is being done and where new embryos are being created, will be able to say to themselves, "Now we don't have to be too concerned about producing numerous extra embryos, because there will always be some couples willing to adopt any that are left over." This offers the clinics something of an excuse to continue their current immoral practices, if not to expand them. In other words, embryo adoption threatens to involve those who are adopting the embryos in a type of complicity with evil, because such adopting couples might indirectly encourage the further production of human embryos in infertility clinics.<sup>4</sup> From a business point of view, clinics might even be tempted to set up a two-tiered marketing strategy to assist their infertility customers. One tier would involve offering standard IVF technologies. The second tier would involve a more economical alternative: for those who did not feel the strong need for a child of their own flesh and blood, they would be offered the possibility of adopting a pre-made embryo from another couple.

I have attempted to offer arguments identifying the intrinsic evil of human embryo adoption as an instrumentalization and misuse of goods proper to procreation and marriage. These goods, and the goods of parenthood itself, are intended to be accessed uniquely and exclusively through the conjugal acts of husband and wife. An important point must be borne in mind with respect to these conclusions. The immorality of embryo adoption says nothing about the blessing that any child born by this technology represents. Children who come into the world are always a gift and a blessing, no matter how they arrive, whether by in vitro fertilization, by embryo adoption, even by cloning, if that were to become possible one day. The child is

---

<sup>4</sup>Cf. Brown Eberl (this volume).

always an innocent bystander in the deployment of these technologies, and absolutely no fault or blame of any sort is imputed to the child. All fault and blame are properly attributable only to the parents or other parties involved in forming a deliberative decision to advert to these technologies.

But there is a deeper difficulty relating to the choice to use these technologies that must be mentioned. I have had the opportunity to meet children who have been born by various reproductive technologies, including artificial insemination, in vitro fertilization, and most recently, I met a beautiful little girl born from embryo adoption. What is most difficult for many people to begin to fathom is how one could affirm that it would be a better state of affairs if that beautiful, joyful child had never been born; that is to say, we seem to have to affirm that it would be better if the parents had chosen to follow the moral path, and never done IVF, or artificial insemination or embryo adoption (if it is correct that embryo adoption is immoral), with the result that a wonderful child would never have become a part of our lives. The proper response here does seem to lie in the hidden and mysterious affirmation that a better state of affairs will always ultimately prevail whenever we choose to pursue the right and the good rather than choosing to violate the moral law, and although certain goods that we might be attracted towards initially will not be ours, other goods of a different and more profound kind will in fact accrue to us. We sometimes imagine that we have a grasp on what constitutes the “best state of affairs” for us in moral decision-making, even though we know our vantage point is much more limited than God’s. While it is the better part of wisdom to submit ourselves to the One who has a broader and more complete plan for all things, including a plan for the suffering and trials we experience, each of us has nevertheless succumbed at various times to the temptation to appropriate the decision about good and evil to ourselves.

What, then, might be able to be done with the multitude of embryos that remain held in cryostasis in fertility clinics and laboratories throughout the world? What other options might exist for the disposition of frozen human embryos? A simple answer to this question seems elusive. As a well-known passage from *Donum Vitae* described the matter:

In consequence of the fact that they have been produced in vitro, those embryos which 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 safe means of survival which can be licitly pursued. (CDF, 1987, I, no. 5)

Notwithstanding the contextual particulars of this passage – that it was not written to address the question of embryo adoption – it is nevertheless clear that extracorporeal human embryos raise profound difficulties in terms of deciding their future fate.

The first point of critical importance would be that under no circumstances can frozen embryos be offered up on the altar of stem cell sacrifice. To do so would involve the parental donor(s) in the intrinsically immoral action of handing over their own progeny to others in order that they might be destroyed to harvest tissues or stem cells. Parents who have become involved in generating embryonic humans in laboratories have an extremely serious parental obligation to protect and safeguard

their own progeny from this kind of exploitative activity, even if the aims of those experimental procedures might ultimately be directed towards the alleviation of diseases in adults or other laudable ends. The preparation of embryonic stem cells by destroying human embryos is a straightforward example of the taking of an innocent human life, an intrinsically evil kind of act that cannot ever be justified by desirable outcomes.

It has been suggested that perhaps one could allow the liquid nitrogen that is sustaining the frozen embryos to evaporate so they would eventually thaw and die a natural death. The argument is offered that the liquid nitrogen may be analogous to the instrumentation and tubes which are sometimes used in medical care settings at the end of a person's life. In a traditional moral analysis, these means of support can become "disproportionate" or "extraordinary" when death is imminent. In the case of the embryo, it is argued that death is very imminent if the liquid nitrogen is removed; in other words, the liquid nitrogen may be serving as a disproportionate means of life-support that would not be morally obligatory. Hence one might be able to stop replenishing the liquid nitrogen, so that the levels would gradually decrease through the natural process of evaporation. Finally, the embryos would warm up to room temperature, thaw out and expire. The analogy between liquid nitrogen and extraordinary means of support, however, does not seem to be entirely compelling, because the early embryos are actually destined, in the right environment, not for immediate death but for growth and development into adults. The proper environment simply happens to be unavailable to them to be able to do so. Hence the analogy is arguably an untenable one.

Perhaps the closest we can come to finding a morally acceptable path would be to maintain those embryos that currently exist in the frozen state, while ensuring that no further embryos would be produced and stored in this way in the future. With the passage of time, the currently frozen embryos should become less and less viable and eventually decay of their own accord. One could even make use of non-human primate embryos to experimentally determine how rapidly primate embryos tend to decay in frozen storage. Perhaps after a few hundred or a few thousand years, all the embryos would have become "unthawable," since their lives would have ended spontaneously during their time in their frozen orphanages. This, at least, would not involve us in the direct moral agency of actively terminating their lives by withdrawing what is keeping them alive, namely the liquid nitrogen, and might be somewhat analogous to a natural "process of aging." A further possible advantage of maintaining the embryos in cryopreservation would be that it might become possible in the future to develop a type of incubator that would allow for the "gestation" of these embryonic humans in an environment completely removed from any maternal influence. The ethics of ectogenesis or "artificial uteri" is an area of active discussion, although the proposal is likely to raise its own unique set of difficulties.<sup>5</sup>

All of these difficult considerations remind us how the initial decision to violate the moral law through IVF in variably has grievous repercussions that lead us into

---

<sup>5</sup>Cf. Kaczor (this volume).



the kinds of quandaries considered here, where no “easy way out” is available. One might say that because of the evil of IVF, a “relational rupture” has occurred which is so severe that it cannot be reversed. The birth of a baby is a kind of relational rupture that cannot be physically reversed. Similarly, the generation of extracorporeal embryos through IVF results in a “relational rupture” that does not seem to be resolvable by man through his own efforts. Certain evil choices have permanent consequences that cannot be undone. The frozen embryos stand as a sad and enduring testimony to the many disordered decisions that have been made and are continuing to be made within our society. They represent something of a permanent scar marring the face of our times, a scar that continues to grow and deepen each day in our midst.

## References

- Caulfield, B. (2001). ‘Where do frozen embryos belong?’ *Human Life Review*, 27, 7–14.
- Cohen, E. (2003). ‘Of embryos and empire,’ *The New Atlantis*, 2, 3–16.
- Congregation for the Doctrine of the Faith (CDF) (1987). *Donum Vitae. (Instruction on Respect for Human Life in Its Origin and on the Dignity of Procreation: Replies to Certain Questions of the Day)* [Online]. Available: [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_19870222\\_respect-for-human-life\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19870222_respect-for-human-life_en.html).
- John Paul II (1988). *Mulieris Dignitatem (On the Dignity and Vocation of Women on the Occasion of the Marian Year)* [Online]. Available: [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/apost\\_letters/documents/hf\\_jp-ii\\_apl\\_15081988\\_mulieris-dignitatem\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/apost_letters/documents/hf_jp-ii_apl_15081988_mulieris-dignitatem_en.html).
- Paul VI (1965). ‘The pastoral constitution on the church in the modern world: Gaudium et spes,’ in A. Flannery (Ed.) (1992), *Vatican Council II, the Conciliar and Post Conciliar Documents*. North Port, NY: Costello Publishing.
- Paul VI (1965). *The Pastoral Constitution on the Church in the Modern World: Gaudium et Spes* [Online]. Available: [http://www.vatican.va/archive/hist\\_councils/ii\\_vatican\\_council/documents/vat-ii\\_cons\\_19651207\\_gaudium-et-spes\\_en](http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_cons_19651207_gaudium-et-spes_en).
- Pius XI (1932). *Casti Connubii (On Christian Marriage)* [Online]. Available: [http://www.vatican.va/holy\\_father/pius\\_xi/encyclicals/documents/hf\\_p-xi\\_enc\\_31121930\\_casti-connubii\\_en.html](http://www.vatican.va/holy_father/pius_xi/encyclicals/documents/hf_p-xi_enc_31121930_casti-connubii_en.html).
- Pius XII (1956). ‘Address to the second world congress and fertility and sterility, May 19, 1956,’ *Acta Apostolicae Sedis*, 48, 467–474.

# Could Human Embryo Transfer Be Intrinsically Immoral?

Christopher O. Tollefsen

## 1 Introduction

This paper is centrally concerned with a relatively narrow question: Could the practice of human embryo transfer be intrinsically immoral, *malum in se*, in particular because it is in some way a violation of the good of marriage? While I will answer in the negative to this narrow question, I want first to identify just a few of the wider questions with which I am not primarily concerned, but which I think the narrow question opens up as important. I will return to some of these wider issues at the end of the paper.

The narrow question is about embryo transfer, not embryo adoption. Embryo transfer might be done for a variety of ends: As part of an IVF procedure, for the sake of a surrogacy arrangement, to rescue a frozen embryo with a view to putting the child up for adoption later, or as part of adopting that embryo. But the distinction between transfer for rescue and transfer for adoption has been seen as important by some commentators. Helen Watt, for example, has argued that transfer for rescue is morally wrong, whereas transfer for adoption is not (Watt, 2001).<sup>1</sup> But if this is true, it can only be true because embryo transfer is not itself intrinsically immoral. Since embryo transfer is part of any proposal to adopt an embryo (that does not involve some surrogacy arrangement), if embryo transfer were intrinsically wrong, so would embryo adoption be.

The issue of embryo adoption is interesting and important. As Watt's qualified endorsement indicates, it is natural to think that there is something special about adoption, and about the relationship between adoptive parents and adoptee, which affects the nature of what one is doing in embryo transfer. The natural thought might be something like this: In adoption, one makes the child one's own, just as God the Father has, through the actions of Jesus Christ, and our own baptism, made us his own children. So the child in the mother's womb is, in some important way,

---

<sup>1</sup> Watt has recently modified her position on embryo transfer, further limiting the class of actions she considers morally permissible. See H. Watt (2006). 'Becoming pregnant or becoming a mother? Embryo transfer with and without a prior maternal relationship,' in T. Berg & E. Furton (Eds.), *Human Embryo Adoption: Biotechnology, Marriage, and the Right to Life* (pp. 55–67). Philadelphia, PA; Thornwood, NY: The National Catholic Bioethics Center and The Westchester Institute for Ethics & the Human Person.

really hers when she is carrying him or her as part of an adoption. And this, in turn, can help to alleviate an emotional sense that carrying someone else's child is weird, unnatural, disgusting, or alienating. But while the point about adoption is true and important, it is not clear that the feelings this truth allviates are themselves morally important or trustworthy. Quite possibly, these feelings should not play a role in our moral assessment of embryo transfer as such.

The fact of adoption might also seem to make the embryo transfer immune to an objection from the immorality of surrogacy arrangements. But such inherited immunity is unnecessary. If we take surrogacy to be "bearing on another's behalf," then it is not the case that embryo transfer as such is surrogacy, and it is clearly the case that surrogacy is not involved in embryo rescue. For the "other" that the definition refers to is another mother, but the embryo carried in embryo rescue is carried for his or her sake, not "on behalf" of the mother who is unable or unwilling to do so. It is not as a favor to her that the embryo is rescued.<sup>2</sup>

It is worthwhile, then, to consider what positive difference adoption might make to embryo transfer over rescue; but I suspect the difference will not be great; that is, both transfer for rescue and transfer for adoption might both be morally permissible and laudable. It is also worthwhile, though, to give thought to the way in which embryo transfer for adoption might make a negative moral difference. Consider, for example, a would-be mother who desires embryo adoption, rather than traditional adoption, because she wants to have the experience of pregnancy.<sup>3</sup> This mother might be instrumentalizing her adopted child in a way similar to some cases of assisted reproduction, as Pacholczyk (this volume) worries; when a couple decide to use IVF rather than adopt a child because they want to have the "whole experience" of parenting, they make their child's origin subordinate to their desires. A similar attitude could be at work in some choices for embryo adoption over traditional adoption. But while there might be various reasons to choose embryo adoption over traditional adoption in some circumstances, becoming a parent, whether through sexual reproduction or adoption, is normatively governed by a concern for the child, and not for the *experience* of having or bearing a child.<sup>4</sup>

Further, Mary Geach argues that an organization "which brings together IVF couples and prospective adopters does involve the latter in the sin of IVF", by providing a conscience-salving facility for IVF couples who do not wish to abandon

---

<sup>2</sup> See G. Grisez (1997). *The Way of the Lord Jesus, Vol. 3: Difficult Moral Questions* (p. 241). Quincy, IL: Franciscan Press.

<sup>3</sup> My thanks to Bethany Carlson for helpful discussion on this point.

<sup>4</sup> Reasons to choose embryo over traditional adoption might include a family relation to the abandoned embryo; see Grisez, 1997. But there might also be good reasons to choose traditional adoption; while infants and young children are no more human beings and persons than are embryos, they can suffer as embryos cannot, and they require various forms of attention when orphaned that abandoned embryos do not if they are to make upright choices. Given the fact that not all embryos or orphaned children *will* be adopted, it might be the case, at least in some circumstances, that orphans make more pressing moral demands on potential adoptive parents than do embryos.

their embryos” (Geach, 2006, p. 254. n. 3). This is made abundantly clear in a case study by JoAnn L. Davidson, “A Successful Embryo Adoption.” Davidson (2001, p. 233) quotes a letter which the genetic parents wrote, to the program director:

We really felt all along that giving up our embryos for adoption was the only choice God would honor. . . . Since we feel that these are our children, we wanted to be able to choose the type of environment in which they would be raised. We are so pleased with the match with our adoptive parents. They could not be more perfect. We are keeping in touch with them via email.

This is a couple who have missed the moral message from their IVF proceedings entirely; but the adoption program and the adoptive parents seem at best to be “playing along” with the moral fantasy of these parents that they are doing something good and noble if they do not make clear in some way their objections to the practice of IVF. In embryo rescue, by contrast, it is clearer that both biological parents and the clinic are co-responsible for an evil that the rescuer is attempting to alleviate – the evil of technical creation and subsequent abandonment of children.

The avoidable wrong, if it would be such, of soothing the conscience of IVF couples, is not, however, the wrong of formal cooperation – a sharing of the wrongful intention of the IVF couple by the adopting couple. Indeed, it does not seem to me that formal cooperation is an issue here; the wrong of IVF has already been done, and the couple need only intend to rescue and adopt a child already in existence (Brown & Eberl, this volume). So while embryo adoption does raise moral concerns that embryo transfer does not, those concerns do not seem to defeat the moral legitimacy of embryo adoption if embryo transfer can be morally performed.

Of course, all such considerations would be moot if embryo transfer as such were intrinsically immoral; but since I do not think the procedure itself is *malum in se*, I think it important that these concerns be raised and addressed, lest the acknowledgement that embryo transfer is morally indifferent lead to abuse.

But why think that embryo transfer is intrinsically immoral? Perhaps the firmest and most cogent defender of this claim has been Mary Geach. Geach sees the moral illicitness of embryo transfer as essentially a matter of marital morality, and in particular, the sexual morality of marriage. It is by its similarity in some respects to a properly ordered marital sexual act, and dissimilarity in others that its wrongness is understood. It is not because of an injury to the embryo implanted in the womb of the woman, for example, that the act is considered by Geach to be *malum in se*.

Others who object to embryo transfer, such as Fr. Tadeusz Pacholczyk and Catherine Althaus (this volume), also focus on the question of whether embryo transfer is somehow contrary to marital morality. Central to all such accounts, as we shall see, is a particular understanding of the significance of pregnancy in marital morality, an understanding that is controversial. In this paper, my primary concern will be with Geach, as representative of this strand of argument. I will also, however, make reference to the arguments and assertions of Pacholczyk and Althaus in passing, and will conclude the paper with some reflections on two particularly striking aspects of their work.

## 2 Geach's Argument

In a recent paper, Mary Geach asserts the following claim, with which I agree:

one should not attempt to isolate these inseparable parts [the unitive and procreative aspects of the marriage act], either by joining oneself sexually to another without performing an act per se apt for conception, or by bringing gametes together so as to produce a human organism otherwise than in the marriage act. (Geach, 2006, p. 259)

Geach further holds that it disintegrates the marriage good “when a man or a woman imitates the marriage act in respect of any function which is specific to the one-flesh union and which in the context of the marriage act contributes to the unitive significance of that act” (Geach, 2006, p. 259). But it is a function of the marriage act to lead to generation; and this function is proper to the one-flesh union and hence to its unitive significance; and so an act such as IVF, which also leads to generation, is thereby imitative of the marriage act (in respect of a function proper to the one flesh union, and contributing to its unitive significance), and is, consequently, degenerative of the marriage good.

So far forth, however, even one who agreed with the claim that a disintegration of the marriage act was possible by means of an extra-sexual type of reproduction such as IVF, might balk at the suggestion that embryo transfer was similar to, say, IVF, or somatic cell nuclear transfer (human cloning). For the generation has already taken place when an embryo is placed in the womb of a rescuer, or adoptive mother. So prima facie, this action in no way imitates the marriage act, since it is neither sexual, nor, properly, generative.

Geach's description of the marriage act does much of the work, however, in effecting the transition, for both the act of admitting an embryo into one's womb, and the act of conjugal intercourse are described by Geach as follows: “an act of admission whereby she allows a carnal intromission of an impregnating kind” (Geach, 2006, p. 261). So the crucial move is from conjugal intercourse as apt for generation to conjugal intercourse as impregnating. The transition is effected in the following passage:

For a woman to do this [perform a marriage act] is for her to be performing an act of generative kind, to be receiving a generative kind of intromission. The generative significance of her act, and the impregnatory significance, are usually one and the same thing; to lay oneself open to an intromission of flesh not of one's flesh, but of another's, an intromission whose function is to make one pregnant, is ordinarily to lay oneself open to an intromission which is of a kind to generate ... for a woman to conceive is for her to get pregnant, and people do not ordinarily separate the two even in thought. (Geach, 2006, pp. 261–262)

The analogy, then, is this: In marital intercourse, the wife permits intromission of the husband's semen (flesh not of her flesh) into her vagina, the function of which is to make her pregnant (“the man performs in the marital union the kind of act that impregnates”); and in embryo transfer, the woman permits intromission of an embryo (flesh not of her flesh) into her womb, the function of which is to make her pregnant. Embryo transfer thus imitates the conjugal act in one of its unitively significant functions.

Of course, biologically, the marriage act might have other functions. What is crucial is that *this* function – generating, and, if Geach is correct, making/becoming pregnant – is essential to the unitive significance of the marriage act. This is clearly seen as regards the generative function of the marriage act. As I shall explain further below, it is precisely because the marriage act is capable of generating that the husband and wife in conjugal intercourse form one organism. Further, their organismal identity in the marriage act is the physical substratum, and indeed, the instantiation of their marriage itself. So IVF, in imitating the generative function, but independently of its appropriate sexual context, disintegrates the good of marriage. And, if Geach is correct, it is because it imitates a function similarly essential to the unitive significance of the marriage act that embryo transfer disintegrates the good of marriage. It is thus intrinsically contrary to the good of marriage, and *malum in se*.

The focus on pregnancy, and its separation, in embryo transfer, from the marital union, is common to Pacholczyk's and Althaus' contributions to this volume as well. Both authors begin with an insight from Pope John Paul II's *Theology of the Body* (John Paul II, 1997), that the marital union as instantiated and expressed in the marital act is an act of self-giving on the part of both spouses. But, according to Pacholczyk this self-giving "becomes subverted [on the part of the woman] as she dissociates pregnancy from marital self-donation" (this volume, p. 73) and for Althaus, "pregnancy is part of the conjugal act" (this volume, p. 61); thus, the attempt to achieve pregnancy outside of the conjugal act is morally similar to IVF, and a separation of procreation from the marital union. So for all three authors, the root objection to embryo transfer comes from their understanding of the relationship between pregnancy, procreation, and the conjugal act.<sup>5</sup>

### 3 Gestation and Pregnancy

Geach's account of this relationship seems to me somewhat more developed than that of Pacholczyk and Althaus. As Geach herself implicitly recognizes in the passage earlier quoted, two crucial links must be established for her argument to be successful. First is the link between acts apt for generation and the man's making the woman (and the woman becoming) pregnant; and second is the link between making/becoming pregnant and the unitive significance of marital intercourse. That is, it must be a biological function of the marriage act not just that it generate, but that it make the woman pregnant; the connection must be biologically or conceptually close enough that the marriage act is truly describable as one in which the man

---

<sup>5</sup> A point noted by Brugger (2006, p. 15). As Althaus (this volume) notes concerning both Brugger and May (2006), their defense of embryo adoption involves a separation of pregnancy from the marital act. My approach to the question is thus of a piece with theirs.

makes the woman pregnant, and the woman gets pregnant. And this making/becoming pregnant, *over and above the generation of a new human being* must be seen as essential to the unitive significance of the marriage act.

Geach's argument for the first connection, as I understand it, is biological. Consider the biological union of fish. Insofar as two fish form a procreative union, it really is just for generation, for the fish that are conceived are not produced inside one of the fish. But the marriage act for human beings is not simply for the sake of fertilization, but "to produce children in the way in which human beings do this, i.e., inside the woman" (Geach, 2006, p. 264). It is to no account, according to Geach, to argue that generation and pregnancy are logically distinct, that one can have either one without the other. The biology matters, and our biology is such that generation, when brought about in the maritally appropriate way, results in pregnancy, not, say, an egg sac that can be kept in storage somewhere, and perhaps transferred. So pregnancy is a part of the biological function that renders man and woman one organism in the marriage act.

Her argument for the second connection is an argument from the complementarity involved in male/female sexual union. In sexual intercourse, the woman admits what the man intromits. Geach writes:

[I]t is important to it as unitive that it should be so: for the marriage act is a union of the sexes, in which the man is acting precisely as a man (*vir*) and the woman as a woman. It is the difference between them, the complementarity involved in that difference which unites the two of them. Now, the central difference between man and woman is that the man performs in the marital union the kind of act that impregnates, the woman the kind of act that gets her pregnant. (Geach, 2006, p. 261)

In other words, union is by definition a bringing together of two things that are in some respect unlike to one another. If man and woman unite, in a maritally significant way, then each must bring something unique to the union, something that the other partner is unable to provide. Geach identifies, as essential to the complementarity involved in union, the male act as one of making pregnant and the female act as one of allowing herself to become pregnant.

It is with these claims that I wish to take the issue. I will argue that making and becoming pregnant is not the functional axis along which we should see the complementarity of man and woman played out in the sexual act; rather, the complementarity *necessary* for there to be a union of two in one flesh is exhausted in certain facts of generation itself. And second, I will argue that making and becoming pregnant is itself not part of the biological function of acts apt for generation; for men and women perform *those* acts; but neither performs an act of making pregnant or becoming pregnant.

The import of my argument extends beyond Geach's conclusions to those of Pacholczyk and Althaus as well. For if "procreation," *insofar as it is relevant to the successful performance of the marital act* does not, conceptually, biologically, or otherwise, include pregnancy as a part of it, then neither does the attempt to achieve pregnancy apart from marital sexual union violate the normatively necessary connection between marital intercourse and procreation. Or so I shall argue.

## 4 Marriage and the Marriage Act

It is necessary first to specify a bit more the nature and good of marriage, and the relationship between that good and marital intercourse.<sup>6</sup> Marriage offers a unique opportunity to many men and women, a chance to enjoy a good available to them in no other way. Were this simply the good of a socially or legally established contract for mutual aid and support, or even an institution designed exclusively for the procreation and rearing of children, that good would be merely instrumental. But marriage offers spouses the opportunity to enter into a complete sharing of lives, a unity that is itself desirable to many couples as an expression and extension of their love for one another.

The attempt of a couple to share totally and mutually in each other's lives would be incomplete if that union were temporary, or open to similar sharing with others. By its nature, then, marriage is permanent and exclusive. Yet marriage is also by its nature sexual. The emotional, spiritual, and psychological unity and closeness of a married couple can and must be expressed and realized in the biological unity that is possible only between one man and one woman, engaged in sexual intercourse.<sup>7</sup>

In marital sexual union, husband and wife become "one flesh," and their love is given concrete embodiment. But while marital love is exclusive, it is also open; the physical union of spouses is uniquely capable of bringing forth new life in love. Sharing of lives is, in sex, also a potential sharing of life. Children are thus the ultimate expression and realization of married love. And only in the context of this spousal dedication to one another and to the fruits of their love can children be nurtured and raised in a way most beneficial, and indeed, just, to them.

The connection between the good of marriage and marital intercourse captured in the notion of two becoming "one flesh" may seem merely metaphorical, but it is, in fact, quite literal. For the man and woman, by engaging in a non-contracepted act of coition, are enabled to perform a biological act that neither one is capable of

---

<sup>6</sup> For helpful discussion of these issues, including the claim that marriage is a basic good, and that this good is uniquely realized in the marriage act, see: G. Grisez (1992). *The Way of The Lord Jesus, Vol. 2: Living a Christian Life (Chapter 9)*. Quincy, IL: Franciscan Press. See also R. George (1999). *In Defense of Natural Law*. Oxford: Oxford University Press. John Paul II's teachings on marriage, which are especially relevant to this discussion, are found in particular in John Paul II (1997). *The Theology of the Body: Human Love in the Divine Plan*. Boston, MA: Pauline Books. See especially the sections "Original Unity of Man and Woman," pp. 25–102, and "The Sacramentality of Marriage," pp. 304–385. For a helpful exposition, see P. Lee (2004). 'The human body and sexuality in the teaching of Pope John Paul II,' in C. Tollefsen (Ed.), *John Paul II's Contribution to Catholic Bioethics* (pp. 107–120). Dordrecht, The Netherlands: Springer. John Paul's related analysis of the family is to be found in John Paul II (1981). *Familiaris Consortio*. Vatican City: Libreria Editrice Vaticana. For helpful commentary on this document, see M.J. Wrenn (Ed.) (1983). *Pope John Paul II and the Family*. Chicago, IL: Franciscan Herald.

<sup>7</sup> See John Paul II (1981). no. 1 on the need for exclusivity of the sexual relationship between husband and wife. See also John Paul II (1997, p. 141).



performing separately, the act of generation. Unlike the seeing, say, or eating and digesting, which acts are performed by individuals, the act of generating a new individual is performed by couples. So in sex, a couple becomes one physical organism – one flesh – in a unique way. Where a commitment to the good of marriage – and the complete sharing of lives that is constitutive of that good – underlies sexual intercourse, therefore, the act of intercourse provides a spiritual, emotional, and above all, physical-organic mode of realization of that sharing.

Of course, it is necessary, for this to be the case, that the act in question genuinely be one of a type oriented to reproduction; but it is not necessary that the act actually result in reproduction. A brief explanation of both points is necessary.

The act must be of a type oriented to reproduction because otherwise there will be no sense in which the couple becomes one being, one biological organism. Just as inserting a ball into a cup does not result in some genuinely new entity, inserting a tongue, say, into an ear also does not result in a new biological entity. Only in sexual intercourse between a man and a woman is a biologically new unity brought into being. But it suffices that the act be of a type oriented to reproduction; it is not necessary that the reproductive capacity be fully actualized in order for the couple to have become one flesh. Thus sterile couples, and couples who have intercourse during infertile periods, still perform genuine marriage acts – acts by which their marital union is biologically instantiated.

The question which Geach's position, as well as that of Pacholczyk and Althaus, forces us to ask, then, is this: Does the possibility of making and becoming pregnant enter into an account of how man and woman become one flesh, one organismal entity, in sexual intercourse? Or is it the possibility of generation *alone* that sufficiently explains how men and women become one flesh in sexual intercourse?

Do non-human animals that reproduce in pairs become one flesh – one organism – in reproduction?<sup>8</sup> I take it that they do. Becoming one flesh in this sense is not itself a basic good; indeed, couples who have intercourse outside marriage become one organism, but that unity is not integrated into the reality of the good of marriage. So there is no objection to saying that unmarried couples, or non-human animals become one flesh, one functional organism precisely insofar as they engage together in an activity required for generating new members of their species.

But generation is, as the earlier example of fish indicated, something that occurs in a variety of ways; in some, the young are generated and gestated within the mother; in others, generation and gestation occurs outside the mother, and in some generation, but not gestation, is internal. But what all species in which male and female individuals are necessary for reproduction have in common is that in reproduction, those male and female individuals function as a biological unity, a single organism. It is thus in virtue of a shared generative function that male and female fish, birds, dogs and cats become organismal unities.

Now it might seem that “they generate together” is inadequate, given the necessity, described above, of complementarity in the organic union. Geach's account

---

<sup>8</sup>My discussion here should be taken as restricted to vertebrates.

might seem preferable precisely because it specifies a peculiarly male part to the one flesh union, and a peculiarly female part as well. But in every case in which males and females generate together, there *is* male–female complementarity: Males contribute sperm, and females contribute eggs.<sup>9</sup> This truly is complementary: Males have no eggs, nor are females in such species capable of auto-fertilization. Unlike those living beings that reproduce asexually, two individuals of the species, each of which makes a different contribution, are necessary for the performance of the biological function of generation.

In other words, pregnancy, and how it proceeds, does not enter *at all* into an account of what, biologically, renders two individuals one, biologically, in performing a generative type of act. An account of the biological *union* of two fish, two sharks, two dogs, or two platypuses, would be complete once it had specified how members of the species did whatever was necessary in order to bring new members of the species into being.

Of course, such an account would leave out much that is crucial to the story of species reproduction, and, in the human context, much that is crucial to the story of the growth of marital communion between spouses, namely, how the newly existing being would itself receive nutrition, how it would grow, in what environment it would live, how it would be educated and socialized, and so on. But these aspects of reproduction are either not jointly performed (such as gestation), any more than are the production of sperm and eggs in the male and female, or they are not performed as one *physical* organism. The reproductive process of a species – and the marital communion of spouses – thus goes beyond generation as such, but no aspects of the process beyond the generation of a new being are *biological* functions performed by a male and a female organism acting as one. So, for human beings, no other aspects of the reproductive process are essential to the unitive significance of the sexual act, when performed by a married couple. It is, for example, normatively part of human reproduction and hence marriage in the wide sense, that both husband and wife should together educate offspring; but this togetherness is neither a physical unity, nor a part of the reproductive function of the marriage act.

Again, this is not to deny that when husband and wife act together for the education of their children they thereby act as one; but the unity of married love goes “beyond the union in one flesh”; and while the good of marriage can be damaged by sundering that unity, not all such forms of damage occur by way of their relation to the marriage act. A husband who abandons his wife in pregnancy has damaged the marriage good; but not because of any action in respect of the marriage act as such.

It might seem, however, that this account is insufficiently species specific. After all, for us, as Geach says, generation implies pregnancy: “for a woman to conceive is for her to get pregnant, and people do not ordinarily separate the two even in thought” (Geach, 2006, p. 263). Thus her description of the male part in generating as “making pregnant” and the female’s part as “allowing herself to get pregnant.”

---

<sup>9</sup> Again, within the restricted context of vertebrates.

Can we really separate the marriage act as generative from the marriage act as impregnating in the way my argument suggests?

As a preliminary suggestion that we can, consider the following cases. Newly married, Mr. and Mrs. Smith have their first sexual intercourse together with a condom. It does not appear that this sexual act consummates the marriage, for Mr. and Mrs. Smith in no way become an organic unity any more than, to use Alexander Pruss' analogy, two parts of a finger separated by latex both belong to the same organism (Pruss, 2000, Section 2).

However, suppose that Mr. and Mrs. Jones, also newly married, have non-contra-cepted intercourse for the first time. Realizing afterwards that intercourse was at a fertile time, Mrs. Jones takes a pill whose only purpose is to prevent implantation in the event of a pregnancy (unlike the "morning after" pill, it is only abortifacient.) Have Mr. and Mrs. Jones consummated their marriage? It seems so; their having performed an action of a type apt for generating has not been vitiated or changed by their having subsequently ended, or perhaps even prevented pregnancy (see below).

Mr. and Mrs. Jones' actions do not, that is, seem to have violated the following restriction:

[O]ne should not attempt to isolate these inseparable parts [the unitive and procreative aspects of the marriage act], either by joining oneself sexually to another without performing an act per se apt for conception, or by bringing gametes together so as to produce a human organism otherwise than in the marriage act. (Geach, 2006, p. 259)

For there has been not sexual joining without performing an act apt per se for conception. But neither, a fortiori, has there been an imitation of the marriage act in respect of some "function proper to the one-flesh union, and contributing to its unitive significance" (Geach, 2006, p. 259). There has, in fact, been no imitation of the one flesh union, since there was a one-flesh union; but generation and impregnation have been separated quite radically (and wrongly) by Mrs. Jones' actions.

I conclude, therefore, that making pregnant is not a function of the sexual act contributing to its unitive significance. We must note that this conclusion applies broadly to all three authors here considered. For if we turn from the language of unitive and procreative significance, favored by Geach, to the language of sexual self-giving and mutual self-donation favored by Pacholczyk and Althaus, we can say that procreation, insofar as it is the fruit of mutual self-donation and not to be separated from that self-donation, does not include, or extend to, the stages of pregnancy consequent upon the generation of a child. What all parties to the discussion, including myself, can agree to, is that pursuit of procreation apart from conjugal intimacy is wrong, both to children and to spouses, because the complete self-donation of the latter is no longer involved in the procreation of the former. But this description does not fit what happens in embryo transfer.

Returning to Geach, I suggest that we can make an even more dramatic claim. I want now to argue that the claim that the male makes the female pregnant is, strictly speaking, false. Thus, making the woman pregnant is no part of what the male does in a sexual act, even one that results in generation. It is thus not part of the function of the sexual act that the male make the female pregnant. And it is thus not an imitation of the marriage act for a woman to be made pregnant by embryo transfer.

There is no doubt that we often speak in a way that converges on Geach's claim. We say that the boy made his girlfriend pregnant, that so and so "got someone pregnant," that Smith impregnated his wife, and so on. But our common way of speaking should not be taken as normative here, any more than our common way of saying that the sun rises in the east and sets in the west.

Moreover, speaking of the man impregnating the woman encourages, and is perhaps a hold over from, a false biology, of an Aristotelian sort, in which the man was the source of the active power, and the woman the source of the mere matter, or the biology that developed after the modern discovery of sperm. Both the common way of speaking, and the Aristotelian and modern misunderstandings can be bolstered, and can bolster, our sense that the male is somehow specially active, the woman specially passive, in the sex act. This sense seems displayed in Geach's language of the man making pregnant, and the woman allowing herself to become pregnant. But the general fact that men are more aggressive than women is certainly not normative for our understanding of the marriage act; nor is the fact that the man puts something in the woman an adequate ground for saying that the man is more active than the woman, that he is the maker, rather than the allower.

Rather, both normatively and biologically, we should see both man and woman as making equal, and equally active contributions to sexual reproduction right here at the point of generation (see also Weaver, this volume). Biologically, men and women both contribute an active principle; it would be equally accurate to say that the ovum transforms the sperm in fertilization as to say the opposite.<sup>10</sup> To make this claim is not to deny complementarity in some sense of the male and female genders, that men and women in general demonstrate a range of characteristics characteristic of their gender that helpfully "go together" (but with a vast range of variation) in male-female relations. Nor is it to deny a range of complementary functions and tasks that arise from the biology of gestation, parturition and early nurture. The biological facts here give reason to think that the father possesses a limited kind of natural authority in the family, due to his not being as incapacitated as the mother after childbirth, and not as closely tied to the home during the child's early years.<sup>11</sup> But in the sexual act, up to and including the generation that is that act's natural culmination, there is a kind of radical equality on display in the very complementarity of sexual reproduction. The biology of generation as such contributes very little to our understanding of sex-differentiated roles, authority in the family, or gender complementarity. But it can perhaps contribute something to our understanding of children as the fruit of mutual self-donation by both spouses.

To continue with the question, "Does the man make the woman pregnant?" we must next ask: "What is the condition of being pregnant?" It is interesting to note

---

<sup>10</sup> It is true, however, that the sperm penetrates the egg, rather than vice versa. Yet this does not seem, biologically, to mean that the sperm uniquely acts upon the egg.

<sup>11</sup> For the considerably fuller argumentation necessary for these claims, and articulation of the various necessary qualifications, see G. Grisez (1997). *The Way of the Lord Jesus, Vol. 3: Difficult Moral Questions* (pp. 629-633). Quincy, IL: Franciscan Press.

that “pregnancy” is a somewhat loose concept. For example, pregnancy is dated differently, depending on our purposes, as, e.g., when doctors date pregnancy, not from conception, but based on the previous menstruation period. Moreover, the concept of pregnancy has become rather politicized. Planned Parenthood’s web site claims that many scientists define pregnancy as beginning at implantation (Planned Parenthood, 2006); and indeed, Dr. David A. Grimes (1997, pp. 1078–1079) has asserted in the *New England Journal of Medicine* that many medical organizations define pregnancy as beginning at implantation.

Politically, this is often part of an attempt to justify the use of the morning after pill as a contraceptive, rather than an abortion. But the attempt fails: Contraceptives prevent conception, and therein lies their moral wrong; abortions end the life of human beings, and therein lies their wrong. Ending a pregnancy might be wrong for some other reason, but the primary wrong, when pregnancy is ended by abortion, is that a human being’s life is ended, and this is a wrong that could be perpetrated prior to pregnancy if that is defined as beginning at implantation, for the consensus among embryologists is that the life of an individual human being begins, not at implantation, but at conception.

So opposition to the morning after pill as abortifacient could and should survive definition of pregnancy as beginning at implantation. And it seems to me that there are some reasons to favor such a definition; from implantation on, mother and child are physically united and, like the mother and father in sexual union, are performing some organic functions more as one, rather than as two, organisms.

They are not, I hasten to add, performing all functions together, and the child is no more a part of the mother than the man is a part of the woman in sexual intercourse. The child has its own internal self-directed orientation to growth and development; it is a genetically distinct individual of the human species. But the shared processes of nutrition, respiration and waste disposal, that are enabled by placental circulation stand as a unique organic bond between mother and child that does not exist prior to implantation. So the idea that pregnancy marks the existence of that unique relationship, and begins at implantation, seems defensible, even if there is, as I think, much in the nature of the stipulation here.

Such considerations continue to effect some separation between generation and pregnancy, *pace* Geach’s, Pacholczyk’s and Althaus’ claims that the two go hand in hand. But even if we deny that these have force, and assert that pregnancy begins when a new individual of the human species comes into existence, then the following question must be asked: Who makes the woman pregnant?

Let us simply stipulate, however, that a woman becomes pregnant when a new individual of the human species comes to exist within her uterine tube (i.e., prior to implantation). The question is; does the man make the woman to be in this condition? And the answer appears to be no: There are at least three better candidates. First, from one point of view, the man and the woman together generate the new human being: As I argued above, there is no sense in saying that the man has played the more active part, so if the man has made the woman pregnant, so has the woman herself.

A second candidate is one for which there is some Biblical warrant: “I do not know how you came into being in my womb,” says the mother of the seven brothers

in Maccabees. “It was not I who gave you life and breath, nor I who set in order the elements within each of you” (2 Maccabees 7). Man and woman cooperate not just with each other, but with God, who thus can truly be said to make the baby come to be, and thereby make the woman pregnant.

Third, why should we not say that the embryo itself – him or herself, in fact – has made the woman pregnant? The embryo does not, of course, generate itself. But I am here addressing, not the question of who generates the embryo – man, woman, and God together do that; but rather the question of who makes the woman to be pregnant. Neither the man nor the woman contributed a new human being to the act of generation, nor did either make a new human being. They performed human acts which are themselves apt for bringing together sperm and an egg, each of which are parts of human beings with a special biological teleology. The egg and sperm engaged in mutually transformative action, as the sperm penetrated the zona pellucida, and plasma membranes from the sperm and the ovum fused. Both the nuclei of the oocyte, and of the sperm, which contain all the chromosomal material of the sperm and egg, then enlarged, and replicated their DNA in anticipation of their first mitotic division.

The male and female pronuclei then lined up and fused together. As part of the formation of gamete cells, the number of chromosomes characteristic of the human cell was reduced from 46 to 23 in sperm and egg. When the male and female pronuclei fused, the 23 chromosomes from the male and the 23 from the female came together, resulting, as William Larsen writes, “in the formation of a zygote containing a single diploid nucleus. Embryonic development is considered to begin at this point” (Larsen, 2001, p. 3).

At the very point, then, when the woman, on the most conservative (but, I think, still somewhat stipulative) definition, of pregnancy becomes pregnant, the activity of the man and the woman has become superseded by the self-directed activity of the new entity, the embryonic human being. The generative causality of the man and woman – the causality effected by the man’s sperm and the woman’s ovum – is at an end precisely because generation is over, and a being with its own biological causality now exists. But it is this existing that “makes” the woman pregnant. If anything makes the woman pregnant, then, it might seem that it is the new child inside her.

If so, then it would seem that when the woman accepts an embryo into her womb via embryo transfer, she does not imitate her part in the marriage act (nor does the clinician imitate the part of the man). It is true that she admits flesh not of her flesh that makes her pregnant; but this is not what she does in the marriage act, even when, in consequence of that act, she becomes pregnant.

Now it is true, as I have pointed out, that a natural history of human reproduction does not stop at mere generation, but continues through the various stages of embryonic, fetal, and infant development. All these stages can therefore be thought of as actualizations of the reproductive capacity of men and women. And it is also true that in various ways these aspects of human reproduction can and ought to be integrated into the wider moral history of a man and woman’s marriage. As the narratives of both John and Suzanne Stanmeyer in this volume demonstrate, the man might, or might not,

continue to provide love and support during the pregnancy, and he might, or might not, take an active role in nurture of the infant, and he might, or he might not cooperate in loving and educating the child with his spouse. For the man to cooperate in all these ways, rather than abandoning or neglecting, is for him to promote the marital good in its unitive dimension by promoting it in its reproductive dimension.

But for someone *else* to perform these various tasks – the tasks which are part of the natural or moral history of reproduction and marriage beyond the act of generation – that is, for someone to imitate the male (or female) part of these histories – cannot be intrinsically wrong in the way that it is wrong to imitate part of the marriage act outside its appropriate context. To generate apart from the marriage act is to fail to respect children; and by being wrong in this way, it thereby is damaging to the good of marriage, which is centrally oriented to the good of children. And to engage in sexual activity in a non-generative type manner is to be engaged in an activity incapable on its own of realizing a basic good, and diminishing of one's capacity to make a complete gift of oneself to one's spouse, and is thereby also damaging to the good of marriage.

But to provide “womb room” for the baby of a mother unable or unwilling to carry him or her; to nurse him or her as one might nurse a foundling; or to raise, love, and educate, as aunts and grandmothers not infrequently do, the children of adults unable or unwilling to do so; or, apart from the context of reproduction, to provide loving care, financial support, and friendship to a child not one's own; all these “imitate” in some way or other activities by which spouses cooperate in marital appropriate ways. But none thereby damage the marriage good, nor are they to be discouraged as contrary to that good.

Indeed, many of these activities might be obligatory under certain circumstances, and all are certainly ways of demonstrating charity to those in need. And this raises two points of particular importance for the essays by Pachelczyk and Althaus in this volume, which I will briefly discuss in closing.

The first is this. Both authors cite an important passage from *Donum Vitae* which asserts the right of every child to be “conceived, carried in the womb, brought into the world, and brought up within marriage” (Congregation for the Doctrine of the Faith [CDF], 1987, II.A, no. 1). This is certainly true: For every child, if some aspect of his or her existence has been brought about or deliberately structured in a way at odds with this, then *someone* has wronged that child. And so this passage provides all persons with moral guidance as regards their relation to their actual and potential children, and provides all potential parents with an ideal for how they should be related to their biological children.

But this passage does not give guidance for what should be done when someone has *already* forfeited on, or been otherwise unable to meet, their obligations as specified in this passage. It does not tell us that we should not adopt abandoned or orphaned children, for example. Nor does it tell us that, should the technology be available, we should not make available to a woman seeking an abortion the alternative of an artificial womb, as Kaczor (this volume) discusses. And neither, finally, does it tell us that embryos illicitly created and perhaps abandoned may not be rescued or even adopted by parents seeking the good of those embryonic human beings.

Perhaps even more interestingly, and this is my second point, this passage from *Donum Vitae* does not tell us anything about the moral ranking of parental and familial relations forged in the aftermath of moral failure, or, indeed, natural tragedy. Both Pacholczyk and Althaus, in their advocacy of pregnancy as specially related to the marital act, and their attempt to distance embryo adoption from what Althaus calls “social adoption,” seem to me to go too far in emphasizing adoption’s secondary status as compared to the ideal depicted by the CDF (Cf. Brakman, this volume for related discussion). Pacholczyk, for example, has written elsewhere that “By presenting oneself to the adoption agency and going through the steps of adopting an infant or child, one is *becoming an adoptive mother*, which is distinct from *becoming a mother* in the full and categorical sense” (Pacholczyk, 2006, p. 47). And Althaus writes that neither gestational nor adoptive mothers can “achieve the fullness of motherhood because neither can secure the continuity in genetic, gestational and social motherhood that accompanies the full meaning of the term” (this volume, p. 52).

Such statements are likely to clang in the ears of those who have become parents through adoption, and who consider themselves “full” mothers and fathers of their adopted children. But why this somewhat derogatory attitude towards adoptive parenthood? There seem to be two reasons. Both seem motivated by rightful concern that contemporary attitudes towards parenting are rooted in the same autonomistic attitudes that pervade morality generally, and that encourage the belief that everything valuable is done sheerly by “choice.” The claim, says Althaus, that “‘only choice maketh the family’ belittles the significance of the nuptial dimensions to the theology of the body” (Althaus, this volume, p. 54). Pacholczyk too appears concerned that if adoptive parents were “full” parents, then this would cast doubt on the significance of the conjugal union for marriage and family.

Two errors must be cleared up, however. First, the idea that social adoption is a matter of choice, whereas “full” parenthood is a matter of nuptial love errs in its understanding of adoption. All adoptions, like all begetting and rearing of biological children, should be an instantiation and expression of marital love and mutual self-giving. It is thus a further error of Pacholczyk and Althaus to write, as they often do, as if embryo adoption threatened to cut the father out of the parenting loop; rather, in cases of embryo adoption, as in adoption at large, a husband and wife together, in an act of love, should offer themselves to the child *who could yet be* a part of their growing family, as related by the Stanmeysers themselves. In the adoption cases, unlike biological begetting, the child already exists, but not yet as a member of the family in question, not yet as an extension of marital love.

The second error returns us to the passage from *Donum Vitae*. There need be no ranking of families, or parent child relations as “full” or “categorical” or less than full or categorical to be found in the claim that adoption – social and embryo – is a response to a failure, moral or natural, in the normative order of parenting. For consider this analogy, which is akin to the theology of adoption Darlene Weaver offers in her chapter here (this volume): Those baptized in Christ are his adoptive brothers and sisters, adopted children of the living God. Does God’s adoptive paternity lack some fullness or perfection appropriate to it? Like those children adopted by human parents, our adopted nature is a result of a departure from the normative



order; that is, it results from the fall, and the subsequent need for Christ's redemptive work. Yet such is the glory of God's adoption of us that that fall is called "happy" in our liturgy.

It is enough to see adoptive parents as creatively imitating God in a special way different from the creative imitation of biological parents, a way that is perhaps in some respects anticipatory of the relationship we will be in to one another in the heavenly kingdom when we are like angels, and are not given in marriage. Adoptive parenting is thus deeply special, and is no less full and categorical, no less possessed of the perfections of parenthood than biological parenting within marriage. And if, as I have argued, embryo transfer is morally licit, and the problems of embryo adoption surmountable, then there seems no reason to think that embryo adoption within marriage would either threaten biological parenthood within marriage, or, despite its being a response to moral failure, that it would be less than full and categorical parenthood.

## References

- Brugger, E.C. (2006). 'A defense by analogy of heterologous embryo transfer', in T. Berg & E. Furton (Eds.), *Human Embryo Adoption: Biotechnology, Marriage, and the Right to Life* (pp. 197–228). Philadelphia, PA; Thornwood, NY: The National Catholic Bioethics Center and The Westchester Institute for Ethics & the Human Person.
- Congregation for the Doctrine of the Faith (1987). *Donum Vitae (Instruction on Respect for Human Life in Its Origin and on the Dignity of Procreation: Replies to Certain Questions of the Day)* [Online]. Available: [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_19870222\\_respect-for-human-life\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19870222_respect-for-human-life_en.html).
- Davidson, J. (2001). 'A successful embryo adoption,' *The National Catholic Bioethics Quarterly*, 1, 229–233.
- Geach, M. (2006). 'The female act of allowing an intromission of an impregnating kind,' in T. Berg & E. Furton (Eds.), *Human Embryo Adoption: Biotechnology, Marriage, and the Right to Life* (pp. 251–271). Philadelphia, PA; Thornwood, NY: The National Catholic Bioethics Center and The Westchester Institute for Ethics & the Human Person.
- George, R. (1999). *In Defense of Natural Law*. Oxford: Oxford University Press.
- Grimes, D. (1997). 'Emergency contraception: Expanding opportunities for primary prevention,' *New England Journal of Medicine*, 347, 1077–1079.
- Grisez, G. (1992). *The Way of The Lord Jesus, Vol. 2: Living a Christian Life*. Quincy, IL: Franciscan Press.
- Grisez, G. (1997). *The Way of the Lord Jesus, Vol. 3: Difficult Moral Questions*. Quincy, IL: Franciscan Press.
- John Paul II (1981). *Familiaris Consortio*. Vatican City: Libreria Editrice Vaticana.
- John Paul II (1997). *The Theology of the Body: Human Love in the Divine Plan*. Boston, MA: Pauline Books.
- Larsen, W. (2001). *Human Embryology*. 3rd edition. Philadelphia, PA: Churchill Livingstone.
- Lee, P. (2004). 'The human body and sexuality in the teaching of Pope John Paul II,' in C. Tollefsen (Ed.), *John Paul II's Contribution to Catholic Bioethics* (pp. 107–120). Dordrecht, The Netherlands: Springer.
- May, W. (2006). 'The object of the acting woman in embryo rescue,' in T. Berg & E. Furton (Eds.), *Human Embryo Adoption: Biotechnology, Marriage, and the Right to Life* (pp. 135–163).

- Philadelphia, P A; Thornwood, NY : The National Catholic Bioethics Center and The Westchester Institute for Ethics & the Human Person.
- Pacholczyk, T. (2006). 'Some moral contraindications to embryo adoption,' in T. Berg & E. Furton (Eds.), *Human Embryo Adoption: Biotechnology, Marriage, and the Right to Life* (pp. 37–53). Philadelphia, PA; Thornwood, NY: The National Catholic Bioethics Center and The Westchester Institute for Ethics & the Human Person.
- Planned Parenthood (2006). *How pregnancy happens* [Online]. Available: <http://www.plannedparenthood.org/birth-control-pregnancy/pregnancy/how-pregnancy-happens.htm>.
- Pruss, A. (2000). 'Christian sexual ethics and teleological organicity,' *The Thomist*, 64, 71–100.
- Watt, H. (2001). 'A brief defense of frozen embryo adoption,' *The National Catholic Bioethics Quarterly*, 1, 151–154.
- Watt, H. (2006). 'Becoming pregnant or becoming a mother? Embryo transfer with and without a prior maternal relationship,' in T.V. Berg & E.J. Furton (Eds.), *Human Embryo Adoption: Biotechnology, Marriage and the Right to Life* (pp. 55–67). Philadelphia, P A; Thornwood, NY: The National Catholic Bioethics Center and The Westchester Institute for Ethics & the Human Person.
- Wrenn, M.J. (Ed.) (1983). *Pope John Paul II and the Family*. Chicago, IL: Franciscan Herald.

# Ethical Considerations in Defense of Embryo Adoption<sup>1</sup>

Brandon P. Brown and Jason T. Eberl

## 1 Introduction

The Roman Catholic Church<sup>2</sup> clearly regards in vitro fertilization (IVF) and related techniques of artificial procreation as immoral because these practices are contrary to the unity of marriage and the dignity of spouses (Congregation for the Doctrine of the Faith [CDF], 1987, *Donum Vitae*). The Church's teaching, however, does not rule out as intrinsically wrong the possibility of heterologous embryo transfer for the purpose of adoption (Pontifical Academy for Life [PAL], 2004). We address the question of the appropriate Roman Catholic moral position on this subject through textual analysis of relevant Church documents. We also respond to certain critiques of embryo adoption, particularly with respect to questions of whether this practice violates the exclusivity of a woman's marital bond, involves illicit cooperation with the "evil" of IVF, or is a source of scandal.

## 2 Understanding *Donum Vitae*

Much of the current literature on embryo adoption makes reference to the *Instruction on Respect for Human Life in its Origin*, also known as *Donum Vitae* [DV], by way of an apt quote or supporting phrase. Of particularly common usage is the phrase that remarks on the "absurd fate" of embryos created and stored through IVF. It is useful to examine with greater depth the force of argument found in this document's guidance to form an accurate view of the various ways of treating cryopreserved embryos that is both practically applicable and faithful to the Church's teaching.

---

<sup>1</sup> We accept John Berkman's defense of the appropriateness of the term "adoption" in this context: J. Berkman (2003). 'Gestating the embryos of others: Surrogacy? Adoption? Rescue?,' *National Catholic Bioethics Quarterly*, 3, 309–329.

<sup>2</sup> Given that this issue has been raised primarily in the Roman Catholic bioethical context, we will use "the Church" to refer to this particular Christian tradition.

Much of the focus of *DV* is directed to questions of technological interventions on human procreation, particularly IVF. The case of embryo adoption is unique within this discussion. It requires that we accept the clear message of *DV* that creation of any embryo in vitro constitutes a grave abuse by introducing a “separation between the goods and meanings of marriage” (CDF, 1987, II.B, no. 4a.). Yet it also requires that we move beyond a mere identification of the abuses of procreation to the question of what is to be done for the resulting new life.

Well over 400,000 embryos in the USA and thousands more worldwide, whose procreation was achieved outside the human body, are now suspended in their development by cryopreservation. If it is truly a serious obligation to regard an embryo “as a person ... defended in its integrity, tended and cared for, to the extent possible, in the same way as any other human being as far as medical assistance is concerned” (CDF, 1987, I, no. 1), then one should not turn away from the plight of those abandoned or condemned. The Church’s moral tradition includes an emphasis on both *positive* and *negative* duties.<sup>3</sup> This twofold obligation requires not only that we refrain from killing other human beings, but also that we actively work to safeguard innocent human life. In the case of an embryo, it seems that this duty is especially compelling since the embryo’s innocence is undeniable, and its protection allows for development into an actively rational life, in which it is able to “discover fully the truth of (its) own being” (CDF, 1987, I, no. 1). Respecting human life must involve a commitment to both positive and negative duties. *DV* lists such positive duties as the criteria by which we must judge scientific technologies – among them respect, defense, and promotion of humanity. It refers to these positive duties as “the work of truth and liberation” (CDF, 1987, I, no. 1). While there may be several possibilities which refrain from actively killing a cryopreserved embryo, there are few which reflect the equally important obligation to safeguard and protect that life through its development into post-natal existence. Indeed, the following analysis will show that through adoptive rescue<sup>4</sup> a cryogenically preserved embryo receives the support of a *complete* respect for its existence.

---

<sup>3</sup> Aquinas states that the first principle of natural law is that “Good is to be done and pursued, and evil avoided” (See Aquinas, 1882a, *Summa Theologiae* [ST], Ia-IIae.94.2). This foundational principle, as well as many of the secondary principles that Aquinas and other natural law theorists derive from it, implies that there are certain positive duties that we must abide by; at the core, we must *pursue* good and not simply *avoid* evil. Immanuel Kant likewise holds that persons are bound by certain positive duties – what he terms “imperfect” duties – to promote their own and others’ well-being (See I. Kant, 1997, *Groundwork of the Metaphysics of Morals*, chap. 2).

<sup>4</sup> The title of “adoptive rescue” implies the responsibilities inherent in both embryo adoption and embryo rescue, and best captures the essence of what we intend in the defense this essay provides. While a primary intent to rescue human life is necessary in licit embryo adoption, we also believe that the permanent commitment of adoption is needed in order to maintain a clear distinction from the unacceptable practice of surrogate motherhood. Those who adoptively rescue cryopreserved embryos commit themselves not only to gestating, but also to raising the children born.

The Pontifical Academy for Life (PAL) (2004) refers to John Paul II's encyclical *Evangelium vitae* when it reminds us of these duties: "Spousal love, as a practical expression of God's love for humankind, is always called to love, serve, defend and promote human life in all its dimensions."

The PAL asserts this need for love, service, and defense toward human life, *even outside of biological procreation*. In other words, spouses have a special responsibility to human life that must be "understood in a much broader sense than biological fertility" (PAL, 2004). The light of the Church's calling, which removes the shadow of the temporal distinction between pre- and post-natal, reveals that the plight of neglected human lives deserves particular love, service, and defense from the marriage family. There is something important, even *essential*, about the concern for human life that adoption entails. In this regard, the PAL (2004) makes special mention of the current practice of post-natal adoption, but the reasons for its necessity apply equally to all children in need. It is a commitment to fulfill by completing that dual enjoinder of the Church: "the procreation and education of children" (Code of Canon Law, 1983, Can. 1055, § 1).<sup>5</sup>

One answer to the question of what to do with cryopreserved embryos is simply to do nothing at all. Catherine Althaus (2005, pp. 114–115) suggests that any action involving an in vitro embryo, whether research or implantation, would be illicit. She argues for a definition of "conjugal act" to include not only procreation and fertilization, but also the period of gestation. In her view, genetic and gestational motherhood are inseparable (Althaus, this volume). Accordingly, the case of frozen embryos is not distinct from the Catholic position on artificial fertilization, since any attempt to rescue these embryos would intrude on the "conjugal act," by Althaus's expanded definition. Without entering into a detailed critique of this unusual definition, it is important to understand its implications for cryopreserved embryos. For those who hold to such a view, the only remaining option is to leave frozen embryos as they are. Yet surrendering to the frozen status of these lives simply because there is no readily available solution to their future is not an acceptable response; nor would such a position bear witness to a sincere defense of pre-natal life. One obvious problem with this approach is that the frozen environment will cause the embryos to die after enough time in storage. Another problem is that an increasing number of fertility clinics are instituting the practice of destroying embryos after five years of storage. In other words, acceptance of continued storage is ultimately a condemnation to death and, at the very least, a rejection of the positive duty to safeguard such embryos. *DV* disapproves of an approach that would seek to leave these embryos in storage and specifically addresses this practice. It argues that the process of freezing is itself a violation of the respect due to human

---

<sup>5</sup>Emphasis added by authors. "Education," in this context, is understood more broadly than just formal schooling. Rather, it implies a more general sense of "upbringing" that includes moral education and everything else a child needs to learn in order to pass successfully into adulthood. This canon thus reflects one of Aquinas's *positive* secondary precepts of natural law: 1882a *ST*, Ia-IIae.94.2; Ia-IIae.57.4; Aquinas, 1882b, *Summa contra Gentiles*, III.122–123.

embryonic life. This is because the freezing process carries with it great risk and constitutes physical harm, but also because it *prevents embryos from receiving maternal shelter and gestation* (CDF, 1987, I, no. 6). This last point is especially important in that it leaves open the possibility for a solution that does provide maternal shelter and gestation. In fact, the term “rescue” is applicable to embryo adoption precisely because it provides this necessary shelter and gestation when it is crucial to safeguard an embryo’s life.

Another solution offered is to remove cryopreserved embryos from storage and allow them to die from lack of a nourishing and supportive environment. Nicholas Tonti-Filippini (2003, p. 136) claims that this is a “natural” way to resolve the issue, in that embryos would be exposed to the natural effects of time from which they had been artificially sheltered by the frozen environment. Recommending this concept is its rescue of embryos from the offense against human dignity arising from cryopreservation. It is not fully accurate, however, to construe it as “natural.” A death that comes in vitro, isolated from any physical human connection, and in which an embryo is merely allowed to return to a natural temperature, is far from being in accordance with nature. When a frozen embryo is deliberately removed from storage without any subsequent implantation, there can be little doubt that the outcome will inevitably result in death. In contrast, *DV* asserts, “It is therefore not in conformity with the moral law deliberately to expose to death human embryos obtained in vitro” (CDF, 1987, I, no. 5). To be clear, this passage is referring to scientific experimentation; yet it is not difficult to see how the principle may be extended to any other practice that knowingly exposes embryos to death.

We have a positive duty not to allow cryopreserved embryos to be destroyed, for research or any other purpose, if we can do something to prevent it.<sup>6</sup> It is also not acceptable to continue to expose embryos to the physical harm and indignity of being left in cryopreservation. What remains is to give such embryos an opportunity for post-natal life, an opportunity that offers the active respect and human care affirmed by the Church repeatedly through its emphasis on our positive duties to human life. Embryo adoption takes up the responsibility for care and respect in the most intimate way possible.

Yet some, such as Tonti-Filippini, find in *DV* cause to critique embryo adoption, and suggest based on this instruction that cryopreserved embryos may not be licitly offered survival:

In consequence of the fact that they have been produced in vitro, those embryos which 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 safe means of survival which can be licitly pursued (CDF, 1987, I, no. 5).

---

<sup>6</sup>This is not to say that this duty is *absolute*, in the sense that everyone must perform it in any given circumstance. For a couple to adopt a child, and even more so for a woman to agree to have another couple’s embryos implanted in her womb, is arguably a “heroic” act. But it is nonetheless one that Roman Catholics in good conscience may be bound to seriously consider; even if they ultimately have sufficiently compelling reasons – e.g., the attendant health risks or duties to their other children – not to fulfill this duty.

Responding to criticisms using this oft-quoted passage involves appealing to context and clear interpretation. Peter Cataldo, for example, notes that this passage refers to scientific research, and the “absurd fate” is for the embryo to be disposed as biological material. No “safe means of survival” can be offered within the research context, specifically because these lives have been created with the intention that they be “spare” and thereby *disposable* (Cataldo, 2001, p. 3). There seems to be a particular emphasis within this passage he quotes from *DV* on the critical fact that the embryos “are not transferred into the body of the mother and are called ‘spare.’” The difficulties for their licit survival arise from an existence outside the womb. In other words, it is only within the context of embryo research and cryopreservation that human embryos are regarded as “spare” or without specific purpose. The absurdity of the situation arises from that fact that these embryos have been divorced from the nutritive and supportive environment of the womb, outside of which they cannot properly continue toward the ordered natural function of the human body. While not directly addressing embryo adoption, this section of *DV* leaves open the possibility of transferring embryos into the body of an adoptive mother; a fate in which they are far from “spare” and are regarded with the appropriate respect due human life.

The PAL (2004), in addressing this key passage, states,

Every other reflection on ... a possible pre-natal adoption of these ‘spare’ embryos, would require a detailed analysis of scientific and statistical data on the subject, which in fact is still not available in the literature in the field.

Interestingly, the PAL explicitly leaves out mention of further *moral* analysis, which implies openness to the moral permissibility of embryo adoption. The PAL’s emphasis is on *practical* applicability, not scrutiny of the practice’s moral foundation.

One final, potentially troublesome aspect of embryo adoption is the idea that *medical intervention* is the cause of pregnancy and gestation. Indeed, when such intervention is intended for its own sake as a substitute for natural fertility, the Church is clear in its condemnation. However, not all artificial interventions surrounding pregnancy and gestation are illicit merely from their artificial nature. In fact, *DV* specifically claims that any such interventions on the origin of human life “are not to be rejected on the grounds that they are artificial” (CDF, 1987, I, no. 3). To render a judgment regarding permissibility, it is necessary to morally evaluate a particular intervention beyond identifying it as natural or artificial. *DV* addresses certain interventions on human embryos. In discussing therapeutic procedures, it states,

One must uphold as licit procedures carried out on the human embryo which respect the life and integrity of the embryo and do not involve disproportionate risks for it but are directed towards its healing, the improvement of its condition of health, or its individual survival (CDF, 1987, I, no. 3).

This passage is prefaced with the phrase “as with all medical interventions on patients.” In other words, it neither specifically includes nor excludes the present subject. Certainly, rescuing an embryo from cryopreservation and implanting it in an adoptive parent fulfills the requirements of this passage: respect of life and dignity,

no disproportionate risks, and directed to ward improvement of condition and survival. As such, the artificial and intentional conditions of embryo adoption do not in themselves disqualify it from licit consideration (Watt, 2001, p. 151).

Although *DV* never specifically mentions embryo adoption, there are many indications that adoption may be a viable solution to the indignity and disregard that surrounds every embryo stored as “spare.” We know that adoption offers many of the essential properties which *DV* identifies as lacking in other possibilities for unimplanted embryos. It makes clear that *any* embryo requires the same respect as *every* embryo; there is no distinguishing of health or source: “If the embryos are still living, whether viable or not, they must be respected just like any other human person” (CDF, 1987, I, no. 4). Adoption removes the indignity of cryopreservation; it offers maternal shelter and gestation; it rescues human lives from inevitable or deliberate death; and it takes seriously our responsibility to individual health and survival. Most importantly, it fulfills the positive moral duty to safeguard and facilitate the development of an embryo’s full natural potential. Furthermore, *DV* indicates that we need not regard the womb as inviolable; there are occasions in which medical interventions on embryonic life and pregnancy are licit.

Of the many times that *DV* deplors abuses, it speaks with particular vehemence about the connection “between (IVF) and the voluntary destruction of human embryos,” and the implication that human beings act as givers of life and death (CDF, 1987, II, Intro.). The text remarks, “This is significant.” Aside from implantation in their genetic mothers, adoption is the sole response to the injustice of supernumerary embryos created through IVF that does not knowingly ignore or permit the destruction of human life so abhorrent to the Church.

### 3 Tonti-Filippini on the Exclusivity of the Marital Bond

Tonti-Filippini argues against the practice of embryo adoption based on the claim that a married woman who adopts another couple’s embryos violates the exclusive marital bond she shares with her husband, regardless of whether her husband agrees to the adoption. A key premise in Tonti-Filippini’s argument is that a woman undergoes an “ontological change” in becoming pregnant – a change which can be licitly brought about only through sexual union with her spouse.

Tonti-Filippini describes the significant change he considers pregnancy to bring about:

Pregnancy is, in itself, a union between mother and child. The child is essentially *of her*, not only located within her, but bound essentially, vitally to her. She is literally home to the child, but not home in the sense of merely housing, but home in the sense of a dynamic dependency and interrelationship in which they share an intimate biological and spiritual connectedness. (2003, p. 119)

Tonti-Filippini (2003, p. 119) supports his contention by noting the physiological changes that a woman undergoes with the onset of pregnancy: “For instance, the embryo actually assumes some control of her endocrine system, which, with the



neural system, is at least partly responsible for physiologically integrating the parts of her body.” Based on such physiological evidence, he concludes:

Further the formation of that union [between mother and child] is an *ontological change*. Physiologically, and, I would argue, because physiologically, therefore in all other ways, given her psychosomatic unity, she and the child are so interrelated that this is a change to her being. In her being, she is *a woman with child*. (Tonti-Filippini, 2003, p. 123)

The phrase “ontological change” is multi-valent and thus merits more detailed conceptual discussion than Tonti-Filippini provides. On the Thomistic metaphysical model recommended by the Church, there are two primary forms of ontological change: *substantial* and *accidental*. Substantial change involves the generation of an entirely new thing which is not of the same nature, or *essence*, as the thing from which it was generated. A relevant example is the generation of a human zygote. A human zygote results from a substantial change that occurs when a sperm cell fertilizes an ovum. At the completion of the fertilization process, what were previously two distinct living substances (the gametes) is now a human person – defined by Thomas Aquinas (1882a, *Summa Theologiae* [ST], Ia.29.1) as “an individual substance of a rational nature.”<sup>7</sup>

Conversely, an accidental change involves neither a change in nature nor a change in the identity of the thing which undergoes the change. An example of this type of change would be the constant flux of micro-level constituents of the body that composes a human person. A person’s body constantly undergoes cellular decay, and hence food is taken in and transformed by digestion into raw material to generate new cells and other bodily components. Throughout these changes, the same substance – the same human person – persists. There is no change in the person’s identity or nature (Aquinas, 1882a, ST, Ia.119.1 ad. 1; Chandlish, 1968, pp. 272–275).<sup>8</sup>

Both of these types of changes can be construed as “ontological changes.” By invoking this term, however, it seems that Tonti-Filippini (2003, p. 122) intends the more significant *substantial* change to occur with pregnancy: “[The mother] is in a new state of being – she is with child.” But to assert that a substantial change occurs with pregnancy is to hold that a woman’s *nature* and *identity* change when “she is with child.” Neither of these could be the case, though. A pregnant woman is no more or less a human person than a woman who is not, or never has been, pregnant. Furthermore, it would be absurd to say that a woman ceases to exist with the onset of pregnancy and a new, distinct substance – a *pregnant woman* – comes to exist

---

<sup>7</sup> See J.T. Eberl (2005). ‘Aquinas’s Account of Human Embryogenesis and Recent Interpretations,’ *Journal of Medicine and Philosophy* 30/4, 379–394; (2006). *Thomistic Principles and Bioethics* New York: Routledge. Chap. 2.

<sup>8</sup> Though Aquinas did not have the scientific resources to recognize the existence of cells as constituents of living bodies, he did understand that living bodies decay, that is, lose some material constituents, and are rejuvenated through nutrition, that is, gain new material constituents by digesting food.

in her place; for such would entail that the two are not the *same person*. This would make becoming pregnant akin to death, in which the living human body that composes a person suffers a substantial change to a lifeless corpse; the only difference is that the change is between a non-pregnant body and a pregnant body, as opposed to between a living body and a corpse.

Therefore, the type of “ontological change” that pregnancy involves must be an *accidental* change. This does not mean that the change is not significant – biologically, psychologically, and spiritually – but that its significance in comparison to the change that my body undergoes every time I digest food is a matter of *degree*, not *kind*. Thus, while a woman who elects to become impregnated with a cryopreserved embryo is submitting herself to a significant degree of change at various levels of her being, her substantial being itself does not change. Whether the degree of accidental change she undergoes is sufficient to warrant a violation of her marital union is a separate question that merits its own discussion.

## 4 Cooperation and Scandal

Although *DV* and the PAL’s “Final Communiqué” do not rule out embryo adoption as intrinsically wrong, the question remains whether those who choose to adopt illicitly *cooperate* with the IVF process that created the supernumerary embryos in the first place, or otherwise cause *scandal* by lending moral credence to the practice of IVF or providing a moral “escape route” for those who engage in IVF.

Cooperation in the moral context is distinguished into *formal* and *material*:

Whereas formal cooperation involves intended approval of [another’s] action, material cooperation is first and foremost helping [another] to accomplish an external action by an act or object without approving of the external action. (Keenan, 1989, p. 215)

An example of material cooperation would be my selling a gun to a person who then uses the gun to murder an innocent person. Assuming I did everything reasonable to make sure that murder was not the gunman’s intention when he made the purchase, such that there is no culpable negligence on my part, then I cooperate only materially in the act of murder by having provided the means by which the action was executed without approving of the action itself. I would, however, formally cooperate with the act of murder if I sold or gave the gun to the gunman while being aware of what he planned to do with it and approving of the murder – perhaps I wanted the victim dead, too, but did not have the stomach to do the action myself.

Material cooperation, however, may involve more of an agent’s intention than in the previous example. As, for example, when a pro-life police officer interferes with demonstrators in front of an abortion clinic, not because she wants to, but because it is her job as a police officer and she is under orders (Grisez, 1997, p. 874). There is thus an operative distinction between *immediate* and *remote* material cooperation. This is not a strict distinction that delineates permissible from impermissible material cooperation; but represents a spectrum in which the permissibility of an act of

material cooperation with moral evil is inversely proportional to how closely it assists the execution of the evil act. So, for example, a bus driver who drops off a woman at an abortion clinic very remotely cooperates with her act of abortion and so incurs no guilt on his part; whereas a nurse who prepares a woman for an abortion procedure cooperates very closely and thus may incur guilt (Watt, 1999).

Whether the nurse incurs guilt or not depends on whether she approves of the act of abortion; if she does, then she is not only materially but formally cooperating in the evil of abortion. Furthermore, a nurse who does not approve of abortion, but works in an abortion clinic because the pay is good cooperates materially to such an extent that she incurs some guilt even though she does not perform abortive acts herself. This is distinct from a nurse who materially cooperates in preparing a woman for an abortion in an emergency room setting where the abortion is ordered by the physician as an unusual procedure to save the woman's life. The nurse in this last case does not materially cooperate in abortions on a regular basis as part of her job, but is compelled by her job to obey the physician's orders and assist him in this unusual case.

Cooperation must also be distinguished from being "complicit" in an immoral action. Complicity, associated with being an "accomplice" in an illegal or immoral action, involves *direct* cooperation – both formal and material – such that one deliberately assists another in performing some action. Cooperation, though, is a wider concept that includes unwitting material assistance to someone who commits an immoral action without necessarily approving of what the other person does. Some may stretch the concept of cooperation to include being merely *associated* with an action in some form or fashion that in no way promotes the action's occurrence materially or formally; but being merely associated with an immoral action does not entail moral culpability. For example, a couple who adopts a post-natal child, who was abandoned by her parents for unjustified reasons or conceived through an illicit sexual encounter, is associated with the child's abandonment or the illicit sexual encounter, insofar as the couple could not have adopted the child if she had not been abandoned or conceived in the first place; but this mere association does not render them culpable for the child's abandonment or the illicit sexual activity. We argue here that embryo adoption may take place without formal or material cooperation, merely association, with the illicit practice of IVF.

It is not evident that embryo adoption formally or materially cooperates with the previous act in which supernumerary embryos were created by IVF and then abandoned in cryopreservation. Germain Grisez (1997, p. 241) concludes:

And though the embryo came to be by IVF, your sister, her husband, and the people at the IVF clinic did what they did some time ago, and what you are considering doing cannot in any way contribute to their past acts of carrying out IVF.

Geoffrey Surtees (1996, p. 10) concurs:

It is the original parents of the child, and any third or fourth parties who had illicit recourse to artificial reproductive techniques, that have failed to meet these moral principles articulated in [DV], not the rescuing, adopting couple. The latter have had no say, no knowledge of, were not party to, and are morally repulsed by, the manner and circumstances by which the child came to be.

Mary Jo Iozzio (2002, p. 591) also agrees:

Unless it is the case that a couple had contracted with the original couple to create more embryos than they knew they would need, the adopting couple is not cooperating formally or materially with the illicit act.

It is, however, not only cooperation with the previous act of creating supernumerary embryos through IVF that is at issue, but also cooperation with an IVF clinic presently to have the adopted embryos implanted, as William Stempsey also notes (this volume). John Berkman (2003, p. 313), contends that, for the sake of adopting cryopreserved embryos, “Catholics no w have legitimate reason to cooperate in at least some cases with the IVF industry.” It is thus important to explore in further detail the degree to which an adopting couple cooperates with an IVF clinic in order to have their adopted embryos implanted in the hope of achieving pregnancy.

Tonti-Filippini (2003, p. 117) describes some of the relevant conditions in such cooperation:

It would be naïve to imagine that the embryo transfer process could happen, in practice, without the heroism of the women extending to their being admitted into the program and expected to conform to the program’s protocols for embryo transfer, including quality control standards, and at least becoming associated with the manifest evils of such a program.

He claims that merely “becoming associated with the manifest evils of such a program” precludes embryo adoption as a morally permissible action. Further explication is required, however, of the nature and degree of the “association” in order to demonstrate whether the degree of association in cases of embryo adoption involves *formal* cooperation with morally impermissible actions.

Nevertheless, Tonti-Filippini (2003, p. 117) raises an important concern: in the process of embryo transfer, IVF clinics employ “quality control standards” in selecting only certain embryos for transfer:

It is also a reality that the directors of [IVF] programs refuse, on eugenic grounds ... to transfer embryos that they consider to be developing subnormally or who are known to have chromosomal irregularities. They hold, with support from geneticists, that it would be “unethical” to transfer embryos that carry or may be likely to carry a disability.

Robert Onder, Jr. (2005, p. 92) highlights the level of cooperation that may ensue because of this practical reality of IVF:

Suppose the IVF clinic screened a large number of embryos on behalf of the would-be adoptive couple, and marked some of them for destruction on the basis of “poor quality” or presence of possible genetic disease. To the extent that the couple paid for the clinic’s services, the couple would be involved in material cooperation with the clinic. If the couple requested or approved of such screening, the couple would be guilty of formal cooperation with the clinic’s deeds.

Onder is quite correct to note that an adoptive couple who *requests*, or otherwise explicitly approves of, the clinic’s screening of the embryos to select the “best” ones for transfer would be formally cooperating with an illicit eugenic practice. But an adoptive couple, even if they are aware that the clinic will screen the embryos for transfer as a matter of course, need not approve of what the clinic does. They may, in fact, strongly express their displeasure at the screening.

Stempsey (this volume), however, raises a different concern, relevant to the PAL's desire for more scientific and statistical data, that even in the quest for merely "viable" embryos for transfer (i.e., selection not based on traits), there are considerable differences about what constitutes criteria for viability. Nonetheless, as discussed further below, it may be permissible for the couple to *tolerate* the IVF clinic's screening practice in order to achieve their intended goal of safeguarding one or more human lives.<sup>9</sup>

It is not evident, though, that simply paying for the clinic's services involves the couple in material cooperation. Certainly, it is unavoidable that the couple is materially cooperating with the clinic, and their payment could be seen as supportive of *all* the clinic's activities. But insofar as the embryo transfer process itself, aside from the screening component, is not intrinsically wrong, there is no material cooperation with moral wrongdoing if that is the only service for which the couple is paying. An issue would arise if the payment scheme includes genetic screening, such that the couple ends up paying for an unwanted screening. But this need not be the case if, after expressing their moral objection to screening the embryos prior to implantation, the couple additionally refuses to pay for that part of the process. Although some IVF clinics may not permit such selective billing, the profit motive may be sufficient for other clinics to go along with the adoptive couple's request since the clinic will still receive a substantial payment from the couple for the rest of the procedure. If the clinic's perception of its "ethical" duty requires it to screen the embryos against the adoptive couple's expressed desire and without payment from the couple, then such is a moral choice of the clinicians involved and not the adoptive couple. There are limits to the degree to which one moral agent (the adoptive couple) can be held responsible for the actions of another moral agent (the IVF clinicians).

Even if those who elect to adopt cryopreserved embryos do not formally or materially cooperate with the practice of IVF, might any involvement with IVF clinics result in *scandal* by apparently legitimizing IVF? Monti-Filippini (2003, p. 117) expresses this concern:

Additionally, the finding of this solution to abandoned embryos may provide something of a public justification for the profligate way in which the lives of human embryos are treated in being overproduced on IVF programs, and the offenses against human dignity inherent to their being produced outside of the sacred context of the marital act and outside the woman's body.

William E. May (2005, p. 53) proposes a simple counter to alleviate this concern:

---

<sup>9</sup>This position echoes that expressed by the PAL (2004) regarding Catholic politicians who may vote to reformulate an unjust law – e.g., a law permitting abortion on demand – such that its unjust aspects are limited, though not altogether eliminated – e.g., a law permitting abortion only in certain restricted circumstances: “In such a context, the giving of one’s own vote – after publicly expressing one’s own firm disapproval of the unjust aspects of the law itself – is ethically justifiable on the grounds that the greatest good possible and the greatest reduction of injury possible at that moment are obtained.”

To avoid scandal, the [adopting] woman should take care to let it be known that she regards [IVF] and surrogate mothering as intrinsically evil, that babies produced artificially are human persons of incalculable value and in need of protection, and that her only interest is to protect an abandoned unborn baby's life.

May's solution strikes us as correct. A real example of how this works is evidenced in Suzanne Stanmeyer's personal narrative (this volume). Nevertheless, it is valuable to explore more deeply the concept of "scandal" and how it applies in this situation.

Thomas Aquinas (1882a, *ST*, IIa-IIae.43.1, trans. Eberl) defines "scandal" as "something said or done less rightly, causing another's [moral] ruin" and occurs when "someone by his admonition, inducement, or example leads another to sin."<sup>10</sup> He further specifies two types of scandal. *Active* scandal occurs, "when someone by his evil word or deed intends to induce another to sin; or, if he does not so intend, when the deed is such that by its nature it is an inducement to sin; for example, someone publicly commits a sin or something that has a resemblance to sin" (Aquinas, 1882a, *ST*, IIa-IIae.43.1 ad 4, trans. Eberl).

*Passive* scandal occurs "when it is outside of the agent's intention, and outside the nature of the action, and yet someone who is disposed toward evil is induced to sin" (Aquinas, 1882a, *ST*, IIa-IIae.43.1 ad 4, trans. Eberl). Aquinas contends that active scandal is always an occasion of moral wrongdoing on the part of the agent who scandalizes another, while passive scandal may not entail moral wrongdoing on the agent's part so long as the word or action that led to the other's moral downfall was good in itself (1882a, *ST*, IIa-IIae.43.2). Cataldo (2002, p. 36) notes that scandal, thus understood, is irrelevant to the question of association with an immoral action that has already occurred. Nevertheless, the concern remains that embryo adoption may "scandalize" others in the future to engage in IVF involving the creation and storage of more embryos than necessary for the initial attempt at pregnancy; thereby exacerbating the problem at hand (Stempsey, this volume).

Consider the typical case of a couple who decides to adopt three or four frozen embryos in the hope that one or more will implant and develop to term. Does this couple's willingness to adopt these embryos lead in some fashion to the moral downfall of another couple or IVF practitioner who will create and freeze more embryos in future IVF procedures? In order to count as a case of active scandal, the couple would have to either (a) perform an evil action with the intention of leading the other couple or practitioner to engage in IVF, or (b) perform an action which is of such a nature that it leads the couple or practitioner to engage in IVF – even if they did not intend to induce the couple or practitioner to perform such an act – by (c) publicly performing an evil action or by (d) giving the appearance of performing an evil action that leads the couple or practitioner to engage in IVF. If the adoptive couple directly supports IVF or otherwise publicly expresses a desire that IVF continue, then they may be involved in active scandal under condition (a). This is because the moral wrongness of creating and freezing supernumerary embryos as

<sup>10</sup> What follows is drawn from Eberl, 2006, chap. 4.

part of the typical IVF process has been independently established above with reference to the Church's teaching, and it is morally wrong in itself to encourage another to do an immoral action. If, however, the couple has not explicitly supported or called for IVF to continue, but commit only the act of willfully adopting embryos that result from IVF, it is not apparent that they are guilty of active scandal. For condition (b) – in the form of either (c) or (d) – requires that the agent commit an *evil* action or give the appearance of doing so. Providing an opportunity for continued life when the only alternative is indefinite suspension or destruction does not in itself constitute an evil action and in fact, as argued above, fulfills our positive duty to safeguard innocent human life.

If any scandal occurs merely because a couple willfully adopts cryopreserved embryos, it can at most be passive scandal. It constitutes such scandal if the couple or practitioner whose intentional act is to engage in IVF is already disposed toward doing this action whether or not any particular person willfully elects to adopt the supernumerary embryos created. Since, as argued above, embryo adoption is good in itself, any moral downfall on the part of others as a result of an adoptive couple's action – e.g., using the willingness of some to adopt supernumerary embryos as an excuse, a perceived moral “escape route,” to create more – does not rest on the adoptive couple's shoulders. These arguments in fact would give moral weight to the creation of such programs like the hypothetical proposed in this book by Berkman and Cary. A Catholic Embryo Adoption Program would specify in its mission and through its financial, medical, and social arrangements its moral relationship to and distance from illicit practices, as well as clarify the issue of toleration of IVF.

We conclude that a woman or couple who participates in embryo adoption neither cooperates with the general practice of IVF that created the supernumerary embryos in the first place, nor causes scandal to others by working with an IVF clinic to have such embryos implanted for the purpose of giving them a chance at life. In fact, as Surtees and Grisez both note, a *positive* witness against the general practice of IVF may result as opposed to negative scandal:

To rescue and adopt this unborn and raise the child ... is nothing less than an extraordinary work of mercy. It reveals both a profound respect for the sanctity of human life and the powerful witness of love; a witness our culture of death so desperately needs to behold (Surtees, 1996, p. 13).

Grisez goes so far as to reverse the cooperative schema:

In reality, however, the IVF clinic's operators would be cooperating with you [i.e., the adoptive parent(s)] in dealing with the embryo as a baby rather than as a product, and nothing you did would contribute to any of their other, wrongful acts (1997, pp. 242–243).

Iozzio contends that IVF may be *tolerated* as an institutionalized practice in modern society since there is not much the Church would practically accomplish if it continued to act intolerantly toward IVF and such an attitude would do nothing to resolve the plight of the cryopreserved embryos that have been created already. She states, “The stance that makes the most logical sense ... is to tolerate – *not necessarily morally condone* – the use of reproductive technologies and the embryos that ensue from that use” (Iozzio, 2002, p. 589).

While we do not agree with Iozzio that IVF should be tolerated in general, we share the view that this practice may be tolerated in the limited context of a couple utilizing the implantation methods of IVF to adopt one or more cryopreserved embryos. Iozzio cites Aquinas, who follows Augustine, in support of the toleration of IVF in this context – what follows is Aquinas’s text with Iozzio’s gloss added in brackets:

Now although God is all-powerful and supremely good, nevertheless, [God] allows certain evils to take place in the universe which [God] might prevent, lest, without them, *greater goods might be forfeited* [pregnancy and childbirth results from the transfer and successful implantation of these embryos], *or greater evils ensue* [permanent cryopreservation or destruction by research scalpel or as waste]. Accordingly, in human government also, those who are in authority, rightly tolerate certain evils, *lest certain goods be lost, or certain greater evils be incurred* (1948, *ST*, IIa-IIae.10.11, trans. Fathers of the English Dominican Province quoted in Iozzio, 2002, p. 589, n.17).<sup>11</sup>

There are a couple of important caveats in utilizing this text, however. First, the agency of toleration rests with either God or a bona fide human authority; it is not up to individuals or couples who engage in embryo adoption to determine whether IVF is to be tolerated in this context. Nevertheless, a bona fide human authority, such as the Church’s magisterium, may properly tolerate the practice of IVF for the purpose of embryo adoption. Second, that the Church may tolerate IVF does not remove the wrongness of the practice or ameliorate the guilt of the individuals involved; Augustine’s example of tolerating prostitution does not absolve prostitutes and their customers of their sin. Thus, if there were something intrinsically wrong with embryo adoption, or if it involved formal cooperation with IVF, or if it actively engendered scandal, then those involved, including the adoptive couple, would be guilty of wrongdoing even if the Church tolerated the practice in order to prevent the deaths of so many innocent human beings.

We have argued above, however, that embryo adoption is not wrong *per se* in accordance with the principles expressed in *DV*, need not involve formal cooperation with IVF, nor actively engender scandal. Hence, it is not embryo adoption itself which the Church must tolerate, but only the IVF process by which the adopted embryos were created, frozen, and later transferred. Such toleration does not contradict the Pauline principle, strictly adhered to by Aquinas, that “evil cannot be done so that good may come about” (1882a, *ST*, IIa-IIae.64.5 *ad* 3, trans. Eberl; Cf. Aquinas, 1953, *Commentarium super Epistolam ad Romanos*, III.1, trans. Cai).

## 5 Conclusion

Moral questions surrounding embryo adoption and IVF in general will persist both in secular bioethics and within the Church for a long time to come. Even though the Church’s magisterium has been quite clear in its condemnation of IVF, many

---

<sup>11</sup> Emphasis Iozzio’s.



Roman Catholic couples who suffer from infertility nevertheless turn to IVF because they perceive it as a therapeutic treatment for their infertility. The perceived vocation of some women and of couples like the Stanmeyers (this volume) to adopt frozen embryos that result from IVF will likewise stimulate further moral conversation even if the magisterium were to pronounce definitively that embryo adoption is an illicit practice – a pronouncement which we do not expect to be forthcoming. Such facts do not call into question the validity of magisterial teaching for Roman Catholics; but they do serve as evidence of the additional fact that the dilemma of how to treat cryopreserved embryos is a true *dilemma* wherein an apparent conflict emerges between respecting the dignity of procreation in the context of marriage and safeguarding innocent human life.

In this essay, we have emphasized the positive duty to provide cryopreserved embryos with a chance to develop to their full human potential, and shown how adherence to this duty is both commensurate with the Church's magisterial teaching in *DV* and does not implicate the adoptive parents in either illicit cooperation with IVF or scandal. As a final reflection, it is enlightening to consider the similarities between embryo adoption and the practice of buying slaves out of slavery. The initial offense committed toward the captive life can make it difficult to imagine an act of rescue as entirely separate from the injustice of slavery – or, in the present case, IVF and cryopreservation. Nevertheless, the inestimable good of the life that is saved legitimizes any unsavory *proximity* to these institutions, so long as formal cooperation and active scandal is avoided.<sup>12</sup>

## References

- Althaus, C. (2005). 'Can one "Rescue" a human embryo? The moral object of the acting woman,' *National Catholic Bioethics Quarterly*, 5, 113–141.
- Berkman, J.R. (2003). 'Gestating the embryos of others: Surrogacy? Adoption? Rescue?' *National Catholic Bioethics Quarterly*, 3, 309–329.
- Cataldo, P.J. (2001). 'Three notes from our readers,' *Ethics & Medics*, 26, 3–4.
- Cataldo, P.J. (2002). 'A cooperation analysis of embryonic stem cell research,' *National Catholic Bioethics Quarterly*, 2, 35–41.
- Chandlish, J. (1968). 'St. Thomas and the dynamic state of body constituents,' *Journal of the History of Medicine and Applied Sciences*, 23, 272–275.
- Code of Canon Law (1983). *Canon 1055, §1* [Online]. Available: [http://www.intratext.com/IXT/ENG0017/\\_P3U.HTM](http://www.intratext.com/IXT/ENG0017/_P3U.HTM).
- Congregation for the Doctrine of the Faith (CDF) (February 22, 1987). *Donum Vitae. (Instruction on respect for human life in its origin and on the dignity of procreation: Replies to certain questions of the day)* [Online]. Available: [http://www.vatican.va/roman\\_curia/congregations/cfaith/doc\\_doc\\_index.htm](http://www.vatican.va/roman_curia/congregations/cfaith/doc_doc_index.htm).

---

<sup>12</sup> We are grateful to Janet Smith for introducing to us the image of buying slaves out of slavery as applicable to this issue, and to Sarah-Vughan Brakman and Darlene Fozard Weaver for helpful comments on an earlier draft.

- Eberl, J.T. (2005). 'Aquinas's Account of Human Embryogenesis and Recent Interpretations,' *Journal of Medicine and Philosophy*, 30/4, 379–394.
- Eberl, J.T. (2006). *Thomistic Principles and Bioethics*. New York: Routledge.
- Grisez, G.G. (1997). *Way of the Lord Jesus, Vol. 3: Difficult Moral Questions*. Quincy, IL: Franciscan Press.
- Iozzio, M.J. (2002). 'Moral analysis: It is time to support embryo adoption,' *National Catholic Bioethics Quarterly*, 2, 585–596.
- Kant, I. (1997). *Groundwork of the Metaphysics of Morals*. M. Gregor (Ed.). New York: Cambridge University Press.
- Keenan, J.F. (1989). 'Prophylactics, toleration, and cooperation,' *International Philosophical Quarterly*, 29, 205–220.
- May, W.E. (2005). 'On "rescuing" frozen embryos: Why the decision to do so is moral,' *National Catholic Bioethics Quarterly*, 5, 51–57.
- Pontifical Academy for Life (February 21, 2004). *Final Communiqué on "The Dignity of Human Procreation and Reproductive Technologies: Anthropological and Ethical Aspects"* [Online]. Available: [http://www.vatican.va/roman\\_curia/pontifical\\_academies/acdlife/index.htm](http://www.vatican.va/roman_curia/pontifical_academies/acdlife/index.htm).
- Onder, R.F. (2005). 'Practical and moral cautions on heterologous embryo transfer,' *National Catholic Bioethics Quarterly*, 5, 75–94.
- St. Thomas Aquinas (1882a). 'Summa Theologiae,' in Commissio Leonina (Ed.), *S. Thomae Aquinatis Doctoris Angelici Opera Omnia, Vols. 4–12*. Rome: Vatican Polyglot.
- St. Thomas Aquinas (1882b). 'Summa Contra Gentiles,' in Commissio Leonina (Ed.), *S. Thomae Aquinatis Doctoris Angelici Opera Omnia, Vols. 13–15*. Rome: Vatican Polyglot.
- St. Thomas Aquinas (1948). 'Summa theologiae,' Fathers of the English Dominican Province (Trans.) New York: Benziger.
- St. Thomas Aquinas (1953). 'Commentarium super epistolam ad Romanos,' in R. Cai (Ed.), *S. Thomae Aquinatis Super Epistolas S. Pauli Lectura, Vol.1*. Turin: Marietti, pp. 5–230.
- Surtees, G. (1996). 'Adoption of a frozen embryo,' *Homiletic and Pastoral Review*, 96, 7–16.
- Tonti-Filippini, N. (2003). 'The embryo rescue debate: Impregnating women, ectogenesis, and restoration from suspended animation,' *National Catholic Bioethics Quarterly*, 3, 111–137.
- Watt, H. (1999). *Cooperation Problems in Biomedical Research* [Online]. Available: <http://www.linacre.org/coop.html>.
- Watt, H. (2001). 'A brief defense of embryo adoption,' *National Catholic Bioethics Quarterly*, 1, 151–154.

# ***Real Mothers and Good Stewards: The Ethics of Embryo Adoption***

**Sarah-Vaughan Brakman**

## **1 Introduction**

The recent debates within Roman Catholicism on heterologous embryo transfer (HET) – the practice of transferring a previously cryopreserved human embryo to the uterus of a woman who is not the genetic mother – have been surprising to both Catholics and non-Catholics. Given the Church’s position that human life has moral status from fertilization onward and her vigorous defense of human embryos against destruction in human embryonic stem cell research, support for the practice might seem assured. Yet, Catholic philosophers and moral theologians have shown that HET raises crucial concerns regarding the continued cultural commodification of human life, the meaning of human sexuality and marriage, and the nature of human personhood.

Three specific areas of concern have arisen: First, whether HET is impermissible because it involves cooperation with (or the appearance of cooperation with) practices that the Church has deemed illicit (i.e., frozen embryos and the dilemma they present only exist because of the practice of in vitro fertilization – IVF). As demonstrated by the work of Brown and Eberl in this volume, however, these are not in principled arguments against the practice and do not tell against HET in all circumstances.

The remaining two positions against the morality of HET are in principled arguments: That the practice is a violation of the marital unity and exclusivity of spouses, and that becoming pregnant and gestating an adopted embryo violates a woman’s reproductive self and diminishes the meaning of motherhood. Specifically, the problem with embryo adoption – a particular form of HET in which a married couple agree to gestate and then raise whatever child(ren) are born to them – is that it “opens [a woman’s] womb to an embryo produced by strangers, and ... such an action illicitly invokes her procreative powers apart from a marital act with her husband” (Pacholczyk, this volume, p. 71). The presence of worthy intentions and even a shared commitment on the part of husband and wife to welcome anyone born of this procedure as their child(ren), does not overcome what is inherently an illicit act. These arguments are secured by appeal

to the sexual teachings of the Church (as particularly expressed in *Donum Vitae*) and by the more recent literature developed by Pope John Paul II, known as the Theology of the Body (Cf. John Paul II, 1997; Mitchell, 2003). Scholars who have advanced these arguments against embryo adoption include Pacholczyk and Althaus (this volume), Geach (2006), Oleson (2006), Watt (2006), and Toni-Fillipini (2003).

In turn, these arguments have been challenged by Catholic scholars who take the position that neither the woman's body nor the marriage is harmed at a fundamental level since the adoptive couple had nothing to do with the creation of the "excess" embryos; vulnerable human life already exists in these cases, the arguments go, and so the woman who gestates an unrelated embryo is not procreating *per se*. Therefore embryo adoption under specific circumstances may be licit if it is characterized primarily as a response to the most central needs of embryos, nurture and love. Those who have advanced responses along these lines include Tollefsen, Brown and Eberl, Kaczor, Weaver, and Berkman and Carey (all in this volume); and Brugger (2005), May (2006), and Williams (2005).

My own reflections on embryo adoption lead me to argue in limited favor of the practice when done under certain conditions and with proper intentions (see below).<sup>1</sup> This chapter contributes to the Catholic embryo adoption literature in two ways. First, my critique of certain central arguments against embryo adoption shows that they may be unsound due to an inaccurate claim regarding the ontological status of adoptive motherhood necessarily entailed by these arguments. This critique joins that of others (Cf. Tollefsen, Lauritzen, Weaver, and Gregory, this volume) in demonstrating the weaknesses of approaching embryo adoption from a singular selection of teachings within the Church, in this case, certain sexual and reproductive teachings.

The second contribution that this work makes is an initial formulation of an ethical framework that appeals to doctrinal teachings, both sexual and social. I offer stewardship and the virtues of the good steward as the frame to give content to the moral evaluation of embryo adoption. This chapter answers two questions: 1) Which dispositional decisions evidence good stewardship of frozen embryos by couples who have them? 2) Would potential embryo adoptive couples necessarily violate marital unity and bodily integrity?

First consider, however, the problem raised by the principled arguments against embryo adoption.

---

<sup>1</sup>My purpose is not to secure the moral permissibility of embryo transfer as such, but rather to show that there may be a type of embryo transfer that is morally licit and praise worthy.

## 2 Embryo Adoption and *Real Mothers*

A generalized version of one of the going arguments against embryo adoption may be detailed as followed:

1. Embryo adoption makes a woman a mother (because she becomes biologically related to and connected with the embryo);
2. “The bond existing between husband and wife accords the spouses, in an objective and inalienable manner, the exclusive right to become father and mother solely through each other” (*Donum Vitae*, II (A), 2);
3. Premise 2 means that husbands and wives have the right to become parents solely through a marital act of love (sexual intercourse);
4. Therefore, embryo adoption is morally wrong because the wife willingly becomes a mother but not through her husband (even if he consents to such a pregnancy).

There is no disagreement between those who argue in favor of embryo adoption and those who oppose it regarding premise 1.<sup>2</sup> This premise in fact is why embryo adoption on my view must include an initial commitment to raise any children born from the procedure. Being pregnant by definition makes one a mother, be it of an unrelated embryo or a genetically related embryo. When a woman is “with child,” she is a mother to that child. As Althaus (this volume) and others rightly claim, the body has moral significance such that it may not be instrumentalized in its most intimate and fundamental nature, even voluntarily. This is a reason why surrogacy, for example, is deeply wrong; a woman is denying the existence of the most fundamental relationship any human can have to another human being and moreover the “surrogate” mother is actually allowing herself to be used for the wants of another individual or couple, even in so-called gift surrogacy arrangements (i.e., carrying a child for one’s sister).

There is likewise no disagreement among interlocutors regarding premise 2, as seen, for example, in the chapters in this volume by the Stanmeyers, the Catholic couple who describe their experiences as embryo adoptive parents. Each of them is careful to detail how this decision was made together and how they viewed the decision making process and the children whom they adopted as fruits of their marital union.

The problem lies with premise 3. Those who accept premise 3 argue that the Stanmeyers and others mistake what “objective and inalienable” refers to – not the settled agreement between spouses but rather “objective” understood as biological. They argue the principle regarding becoming parents solely through each other

---

<sup>2</sup>The only disagreement is with those who advocate a position which has come to be known as embryo “rescue” – this is the view that embryos may be gestated by a woman with the sole intention to save the life of the embryo, not to necessarily be the social parent of any children thus born. This view does not necessarily accord the vocational significance of motherhood to gestation, seeing it primarily or completely as a biological process (see Oleson, 2006). For a defense of embryo rescue see May (2006).

refers to the one-flesh unity of marital love and that its presence in *Donum Vitae* is further evidence that the right to become parents only through each other is referring to the natural (read biological) order which begins with marital sexual intercourse and proceeds through conception, to implantation, to gestation and finally, to birth (Cf. Althaus, this volume).

The problem here is that the Church historically supports the adoption of children post natively, what I refer to as traditional adoption. Yet, if persons, especially women, can licitly become parents through traditional adoption, then the door swings open to the possibility of becoming parents other than through the conjugal act. In this case, premise 2 seemingly would not be completely specified by premise 3. If we could say that “husbands and wives only becoming parents through each other” included the decision, made together, to adopt a child, then we might also argue that embryo adoption could be licit in the same way. The support within the Church for traditional adoption therefore is problematic for those who oppose embryo adoption on the above grounds.

To my astonishment, the response on the part of all of these scholars to the challenge from traditional adoption has not been to access the tradition as a whole regarding adoption, nor to think about what a Catholic theology of parenthood or adoption might look like (Cf. Weaver this volume), but rather to take the position that adoptive motherhood affords a less genuine form of parenthood, such that the traditional adoptive mothers are neither the “actual mother” (Tonti-Filippini, 2006, p. 81), nor “real ... full and categorical” mothers of their children (Pacholczyk, 2006, p. 47), nor even “mother(s) in the primary, natural sense of that word” (Oleson, 2006, p. 183). Thus these scholars argue that post-natal adoption of abandoned children is a noble gesture that causes no problem to conjugal unity because it does not disturb the vocational significance of true (i.e. embodied) motherhood. They contend that the problem with embryo adoption is that it makes a woman “really” a mother of a given child (since she is now the biological mother) when she ought only to become so through the act of conjugal love with her husband. Furthermore, as Althaus’ work discusses (this volume), to the extent that embryo adoption is relevantly similar to traditional adoption, this does not bode well for embryo adoption. On Althaus’ view, traditional adoption is only justified for orphans and is a less than satisfactory situation for children. In like manner, Tonti-Filippini claims adoption is a “legal fiction,” implying adoptive families are imitation families (2006, p. 81).

Curiously, the proof of this inferiority of adoptive motherhood is only the line from *Donum Vitae* itself; sometimes accompanied by some statements that such a truth can be accessed by natural reason (Cf. Tollefsen, this volume, p. 99–100 for a complementary discussion of these claims). First, there simply are no writings nor teachings in any part of the Catholic tradition which specify, stipulate, or even hint at adoptive parenthood as less “real” or “categorical” than genetic or biological parenthood. (In fact not one of these scholars offers any such additional “proof.”) Second, to the extent the Church does speak to the issue of traditional adoption, something quite different regarding the status of becoming a parent through adoption is suggested. In *Evangelium Vitae*, for example, Pope John Paul II said:

A particularly *significant expression of solidarity between families is a willingness to adopt or take in children abandoned by their parents or in situations of serious hardship. True parental love is ready to go beyond the bonds of flesh and blood in order to accept children from other families*, offering them whatever is necessary for their well-being and full development. (1995, chap. IV, no. 93 – emphasis added)

How can we explain the use of the phrases “true parental love” and “ready to go beyond the bonds of flesh and blood” other than to understand adoptive parents as “truly parents” just as genetic parents are truly parents? The fact that parenthood is typically rendered through embodied procreation between husband and wife does not necessarily mean parenthood not founded in biological reproduction is of a “less real” or secondary status. Consider the following statement made by Pope John Paul II on September 5, 2000 to a meeting of adoptive families:

Adopting children, regarding and treating them as one’s own children, means recognizing that the relationship between parents and children is not measured only by genetic standards. Procreative love is first and foremost *a gift of self. There is a form of “procreation” which occurs through acceptance, concern and devotion. The resulting relationship is so intimate and enduring that it is in no way inferior to one based on a biological connection.* (2000, no. 4 – emphasis added)

In this statement, John Paul II undercuts the argument concerning traditional adoptive motherhood advanced by Monti-Filippini (2003), Oleson (2006), Williams (2005) Althaus (this volume) and Pacholczyk (2006). Ideally we recognize parental bonds with children based on a biological connection, but such bonds may also equally be measured by the self-giving love that adoptive parents have for their children. John Paul II tells us that adoptive parents even “procreate” when they adopt children. In light of these passages alone, it seems problematic to argue becoming an adoptive mother is becoming a less “real ... full and categorical” mother as compared to becoming a genetic or biological mother (Pacholczyk, 2006, p. 47).

Second, the appeal to natural reason that those opposing embryo adoption tell us displays the truth of the inherently inferior status of adoptive motherhood seems muddled at best. By this, these writers seem to mean something like an appeal to the use of language colloquially such that “real” mothers refer to biological mothers. Yet this does not prove anything regarding the truth value of such language, just that there is an overall sense of genetics and biology as constituting typical and important relations in society<sup>3</sup> However, if anyone wishes to appeal to the truths of natural reason born of experience, then all he need do is ask any person adopted at birth who her “more” real mother is; the woman she never met who gave birth to her or the woman who was with her from the day she was born – whose loving presence was felt during every illness and crisis of her life as well as during every triumph.

Additionally, these views portray a stunning lack of appreciation of the physical and biological dimensions which establish the affective and de facto relationship of

<sup>3</sup>For an extended critique in this regard, see S.V. Brakman and S.J. Scholz (2006). ‘Adoption, ART, and a re-conception of the maternal body: Toward embodied maternity.’ *Hypatia*, 21(1), 54–73.

parent and child. Consider Oleson's claim, "because of the intensity of the bodily and personal intimacy of the union, she [the embryo adoptive mother] will naturally regard the child as hers, while the husband will be denied the same kind of paternal relation to it" (2006, p. 183). Setting aside the gendered concerns this view raises (Cf. Weaver and Mahowald, both this volume), the view that biological relatedness can only be conferred from either a genetic contribution or from pregnancy misses what makes adoptive parenthood "real" to be gin with – the permanent physicality of parenting, the loving complete self-giving physical presence of a mother and of a father in a child's life (Brakman & Scholz, 2006).<sup>4</sup> Moreover the idea that only genetic contribution or pregnancy can supply the "natural" regard of parental bonds posits a sadly constricted view of the human capacity for attachment and love and again flies in the face of the lived experience of families formed by adoption.

I have shown that the argument for premise 3 (that genetic or biological parenthood is solely constitutive for becoming a mother), is unsupported by both Catholic doctrine and tradition. But if the truth of premise 3 is questionable – that husbands and wives have a right to become parents only through an act of sexual intercourse – then the soundness of any arguments against embryo adoption that necessarily entail premise 3 may be questioned as well.

What then to make of the principle expressed in *Donum Vitae*? The purpose of this document was to speak to licit uses of fertility treatments and the overall principle was invoked in that context. The fact that there are children who need parents and unfortunately now embryos who need parents is a different matter altogether. Vulnerable human embryonic life exists because of a social or personal injustice – that something good can result from the existence of frozen embryos, (as long as it does not involve cooperation in evil), may be part of God's providence. To see how this might be possible, we need to have an account of how we can understand our responsibilities to ourselves and to each other.

### 3 Good Stewards

#### 3.1 *Stewardship and its Virtues: Scripture*

What is the responsibility of stewardship on a Christian account? According to Swartley, "The biblical perspective affirms that stewardship is not stewardship of one's possessions, but stewardship of what belongs to God. Stewardship is not

---

<sup>4</sup>The focus on genetic and biological relatedness some argue is important for establishing the permanence of the parenting relationship, yet permanence is precisely what adoptive parenthood is all about and what distinguishes it from foster parenting, which is not permanent and which recognizes the adult as standing in for a parent who still is considered as such. When one becomes an adoptive parent, she is the parent herself, not a person acting as a parent. This is true in the eyes of the law as well as in the hearts of the parent and child.



a way of managing of *our* possessions; it means rather that we care for what God has entrusted to us” (1978, p. 23). What has God entrusted to us? First, we have been given our very selves. We have been created *Imago Dei* – in God’s Image (Cf. Genesis 1:26–27) and as such we are representatives of God and His Glory. This means we are first stewards of our bodies and cannot use them in ways that are contrary to human flourishing. We also have been entrusted to care for all of God’s creation (Cf. Psalm 8:4–5) and to share the goods of creation with all who need them (Coleman, 1994, p. 920).<sup>5</sup>

Given the terrain of stewardship, there still remains the question of who is the good steward. The virtuous steward is ever sure to do God’s will, as we see in numerous passages in the New Testament (Cf. Luke 12:42–48 and Luke 16:1–15). The good steward must be ever vigilant in thought and deed to fulfill his charge, clearly showing the primary virtues of stewardship are fidelity and trustworthiness (Cf. 1 Corinthians 4:1–2).

Christian stewardship entails positive duties to care for others as well as negative ones and so the good steward also is expected to further and develop the created world.<sup>6</sup> No where is this better exemplified than in the parable of the three stewards found in the Gospel of Matthew. This parable is central to my analysis:

It will be as when a man who was going on a journey called in his servants and entrusted his possessions to them. To one he gave five talents; to another, two; to a third, one – to each according to his ability. Then he went away. Immediately the one who received five talents went and traded with them, and made another five. Likewise, the one who received two made another two. But the man who received one went off and dug a hole in the ground and buried his master’s money. After a long time the master of those servants came back and settled accounts with them. The one who had received five talents came forward bringing the additional five. He said, “Master, you gave me five talents. See, I have made five more.” His master said to him, “Well done, my good and faithful servant. Since you were faithful in small matters, I will give you great responsibilities. Come, share your master’s joy.” (Then) the one who had received two talents also came forward and said, “Master, you gave me two talents. See, I have made two more.” His master said to him, “Well done, my good and faithful servant. Since you were faithful in small matters, I will give you great responsibilities. Come, share your master’s joy.” Then the one who had received the one talent came forward and said, “Master, I knew you were a demanding person, harvesting where you did not plant and gathering where you did not scatter; so out of fear I went off and buried your talent in the ground. Here it is back.” His master said to him in reply, “You

---

<sup>5</sup>Our responsibility to care for the earth is a central part of the social doctrine of the Catholic Church (Cf. Coleman, 1994; Enderle, 1997; Jegen and Manno, 1978). There is also a substantial literature on stewardship and the Church in relation to finance (Cf. Stackhouse, 1987) and health care (Cf. Magill, 2001; Magill and Prybil, 2004; Quinn, 2000; Schotsmans, 2003; and Shannon, 2001). Finally, non-theological literature on stewardship may be found in environmental ethics (Cf. Welchman, 1999 and Wunderlich, 2004) and business ethics (Cf. Caldwell and Karri, 2005; Donaldson and Davis 1991; and Kulik, 2005).

<sup>6</sup>Positive duties as well as negative duties are part of the natural law tradition. Thomas Aquinas stated the first principle of what is known as natural law thus: “Hence the first precept of law is that good is to be done and pursued, and evil is to be avoided (Aquinas (1988), *Summa Theologiae*, The Treatise on Law, Q. 94, II, p. 49, emphasis added).

wicked, lazy servant! So you knew that I harvest where I did not plant and gather where I did not scatter? Should you not then have put my money in the bank so that I could have got it back with interest on my return?

Now then! Take the talent from him and give it to the one with ten. For to everyone who has, more will be given and he will grow rich; but from the one who has not, even what he has will be taken away. And throw this useless servant into the darkness outside, where there will be wailing and grinding of teeth.” (Matt. 25:14–30)<sup>7</sup>

What is interesting about this parable and helpful for thinking about embryo adoption is that stewardship duties as detailed in this parable are clearly more than merely custodial. “Caring for” that with which we have been entrusted entails some risk and creativity, even courage, on our part. We are not merely supposed to “watch out” for that which is entrusted to us. The master essentially tells the third steward that he must know that the master is always trying to build riches and the steward should have been acting along those lines, not according to an attitude of mere preservation.

Given this obligation of stewardship it does not necessarily follow that each of us has the same level of responsibility to each and all. Certainly different things can be said to be entrusted to each of us differently, based on for example particular roles we occupy or talents we possess. My children are more directly entrusted to me than your children are entrusted to me because of the particular role I have as their parent. Yet all persons have been entrusted with your children and thus have some level of responsibility for sharing with them the good of creation.

Some account, however, seems needed to explain why certain individuals (or couples in the case of embryo adoption) reason *they* have an obligation for caring for something or someone for whom they do not necessarily have any direct relational or status responsibility and yet others similarly situated do not. On a Christian account, different things are entrusted by God to different people based on needs, ability and talents:

To one is given through the Spirit the expression of wisdom; to another the expression of knowledge according to the same Spirit; to another faith by the same Spirit; to another gifts of healing by the one Spirit; to another mighty deeds; to another prophecy; to another discernment of spirits; to another varieties of tongues; to another interpretation of tongues.

But one and the same Spirit produces all of these, distributing them individually to each person as he wishes. (1 Corinthians 12:8–11)

If different people have different gifts, and if one has a responsibility to use one’s gifts for good – “As each one has received a gift, use it to serve one another as good stewards of God’s varied grace,” (1 Peter 4:10) – then we may assume that some individuals (or couples) given their specific gifts and particular circumstances

---

<sup>7</sup>The commentary on this parable found in the *New American Bible* is instructive: “Although the comparison is not completed, the sense is clear; the kingdom of heaven is like the situation here described. Faithful use of one’s gifts will lead to participation in the fullness of the kingdom, lazy inactivity to exclusion from it” (United States Conference of Catholic Bishops, 2002, footnote 7 of Matt. 25:14). <http://www.nccbuscc.org/nab/bible/matthewmatthew25.htm>

may discern a calling or vocation to care for or share with particular others in a particular way. “Vocation” describes the recognition and acceptance by individuals of God’s request to them to use particular gifts in service to others in a particular fashion.<sup>8</sup>

Finally, if we are stewards of each other, how ought we to each other? The answer is that we ought to treat others as God treats us. For Christians, the ideal steward is Jesus and we do rightly when we follow His example. I develop this idea further and show its import for the principles and virtues specified by Catholic social teaching in the next section.

### 3.2 *The Virtues of Stewardship: Catholic Social Teaching*

As seen above, the steward of the goods of creation needs to be faithful, trustworthy, courageous, and creative/risk taking. In regard to the stewardship of vulnerable others and to sharing the goods of creation with them, the good steward must also embody the virtues of charity and solidarity. I turn now to a discussion of charity and solidarity, as they are detailed in Catholic social teachings.

Charity is the response in love to the fundamental needs of other human beings. As such, it refers neither to actions without the disposition of love, nor conversely to a feeling of compassion without the presence of actions in service to others. The parable of the Good Samaritan, for example, is usually appealed to as an example of the virtue of charity. In fact, it is of note that after Jesus enjoins mankind to love one’s neighbor as one’s self, the parable of the Good Samaritan follows, making clear who is to be considered one’s neighbor. In his first encyclical, Pope Benedict XVI (2006) says:

The parable of the Good Samaritan (Cf. Luke 10:25–37) offers two particularly important clarifications. Until that time, the concept of “neighbor” was understood as referring essentially to one’s countrymen and to foreigners who had settled in the land of Israel; in other words, to the closely-knit community of a single country or people. This limit is now abolished. Anyone who needs me, and whom I can help, is my neighbor. The concept of “neighbor” is now universalized, yet it remains concrete. Despite being extended to all mankind, it is not reduced to a generic, abstract and undemanding expression of love, but calls for my own practical commitment here and now. (*Deus Caritas Est*, no. 15, p. 19)

The neighbor as defined here as “anyone who needs me, and whom I can help” thus stipulates that those who are particularly vulnerable to me and those whom I can provide some assistance are necessarily subjects of moral concern to me. To evidence the virtue of charity is to respond in love to care for those vulnerable and/or oppressed persons whose lives we can make better through our actions.

---

<sup>8</sup> For more on vocation, see G. Grisez (1992). *The Way of the Lord Jesus, Vol. 2: Living a Christian Life*. Quincy, IL: Franciscan Press.

Pope John Paul II discussed charity and its relation to the care of the vulnerable thusly:

Today, furthermore, given the worldwide dimension which the social question has assumed, this love of preference for the poor, and the decisions which it inspires in us, cannot but embrace the immense multitudes of the hungry, the needy, the homeless, those without health care and, above all, those without hope of a better future. (*Compendium of the Social Doctrine of the Church*, no. 182 – emphasis added)

Given their status as human beings with inherent dignity and rights, frozen human embryos certainly qualify as *those without hope of a better future* as well as being the least of my *Imago Dei* brethren (Gregory, this volume; Williams, 2005). As such frozen human embryos are fitting subjects of charity.

Solidarity is also a virtue stipulated in Catholic social teaching. It is expressed in the context of knowing that God has placed his trust in us to take of each other as brothers and sisters in Christ. Pope John Paul II said that: “solidarity is ... a firm and persevering determination to commit oneself to the common good. *That is to say to the good of all and of each individual, because we are all really responsible for all*” (*Solllicitudo Rei Socialis*, 38 AAS 80 (1988), 565–566, quoted in *Compendium of the Social Doctrine of the Church*, 193 – emphasis added). The Good Samaritan exhibited both virtues of charity and solidarity and his actions are extolled to us as an example for how we ought to treat each other. Given their status as human beings with inherent dignity, frozen human embryos are part of the human community with whom we stand in solidarity. It is, for example, an expression of that solidarity when the Church speaks out against the destruction of human embryos in experimentation.

Solidarity joins charity, fidelity, trustworthiness, courage, and creativity/risk-taking as some of the necessary virtues of the good steward. I turn now to a summary synthesis of what an ethic of stewardship might look like.

### 3.3 Towards a Framework: Virtuous Stewardship

Good stewardship begins with the recognition of oneself as entrusted by God to care for creation and to share with others (who are also *Imago Dei*) the goods of creation. The minimal duty of stewardship is fidelity to not neglect that which He directly entrusts to us and to be trustworthy in this regard.

But of true Christian stewardship, more is required, as the parable of the three stewards illustrates. We have positive duties to enhance God’s creation and to further others and to ensure that they have the goods needed for a decent basic life. We fail the call to be good stewards if we do not act as those who are entrusted with the welfare of our fellow man, or if we see ourselves as mere custodians of creation. Love in Action – as embodied in Christ/God the Redeemer – illustrates that everyone in need whom we can affect is our neighbor. Moreover, being a good steward necessarily includes a focus on the virtues. The good steward possesses not only the virtues of trustworthiness and fidelity, but also courage and creativity/risk-taking,

as well as charity and solidarity towards other humans who are vulnerable and whose lives we may positively affect. The unethical or bad steward is the person who neglects to evidence proper care for that which is entrusted, including a failure to share with others the goods of creation. One may be a bad steward by being greedy, proud, and dishonest, to be sure. On the account of stewardship I have detailed here, one also may be also a bad steward by adhering to an insufficiently robust conception of caretaking, such that one displays other vices through her action/inaction – laziness, cowardice, and lack of creativity.

This account is an initial formulation of an ethic of stewardship. Challenges are possible though I believe the basic foundation sound. Let us now see if this account is helpful in understanding the moral dilemma posed by the adoption of frozen embryos.

#### 4 Stewardship and Couples with Frozen Embryos

What does it mean to be a good steward of frozen embryos?<sup>9</sup> In the Catholic tradition in particular, embryos as nascent human life are morally equivalent to born children. As such, it follows that stewardship of frozen embryos by those couples who participated in the creation of the embryos is similar to the stewardship responsibilities they have to their (born) children. Sutton reminds us that when “viewed as a gift from God entrusted to our care as our neighbor, created in the image of God, the child cannot be viewed as an object that we may dispose of as we wish. To treat children as products and properties is incompatible with that caring and respectful attitude towards the child called for by the parental vocation understood as delegated by God” (Sutton, 2002, p. 147). The answer to what it means to be a good steward of a couple’s frozen embryos is therefore that a couple ought to have the embryos thawed and implanted, with a view to welcoming an y children born to them.<sup>10</sup>

Of course in any given situation there may be a serious impediment to transferring the embryos to the genetic mother and that raises the question: of those currently available options, which constitutes good stewardship of the embryos? If the genetic couple is unable to gestate the embryos, they are left with four options other than embryo adoption: (1) donation to research, (2) destruction, (3) letting die by thawing, or (4) continued storage until the embryos are no longer viable (Cf. Brakman &

---

<sup>9</sup> I note that the creation of frozen embryos is itself a violation of good stewardship of a woman’s reproductive capacities and of any “excess” embryos themselves. This analysis assumes that frozen embryos exist, though according to virtuous stewardship, no new embryos could be created.

<sup>10</sup> To my knowledge, only Pacholczyk (this volume) argues that it is morally impermissible for the genetic couple to agree to an embryo transfer to the genetic mother.

Weaver, this volume). It appears to be a straightforward violation of the rights of the embryos for the genetic couple to consent to their destruction either directly or through the release of the embryos for research, hence the Church's repeated calls against both of these options (Brakman & Weaver, this volume).<sup>11</sup>

Additionally, the data on couples who have frozen embryos show that, independent of their views regarding the moral status of embryos prior to using IVF, a majority of them said that they could not merely donate the embryos as so much genetic material, because these "embryos were attributed a personhood that lack physical presence but contained biology and spirituality". In this sense they acquired a virtual personhood" (de Lacey, 2005, p. 1665). This means that in reality, most couples with frozen embryos are not releasing them for either destruction or research.

The third option, letting die by thawing, has been embraced by some Catholic scholars on the rubric of the ordinary/extraordinary means distinction, with attention to the causal distinction that "allowing the embryos to die is not the same as directly killing them" (Berg & Furton, 2006, p. 330). In the tradition, extraordinary means of treatment are morally optional, whereas ordinary means are obligatory. For a procedure, treatment or medication to be understood as extraordinary, it would have to be unlikely to benefit and also would have to be considered excessively burdensome. The problem here is that being maintained in their cryopreserved state *is* likely to benefit the embryos *if* this affords them the opportunity to be adopted. Therefore the option of letting them die cannot be deemed extraordinary means, much less subject to moral evaluation as such without first a judgment on the moral permissibility of embryo adoption. Moreover, as Pacholczyk (this volume) rightly notes, since the embryos are not in the dying process *per se*, the use of the distinction is not directly analogous.<sup>12</sup>

If an option exists that allows for human flourishing, then letting die by thawing is clearly a failure of fidelity of the care of God's most vulnerable ones. It may also be a failure of charity, solidarity, and creativity regarding one's charge to care for creation and to share the goods of creation with those who are lacking.

The fourth option (in addition to gestation by the genetic or adoptive mother) is the decision to maintain these embryos in stasis and do nothing. This is the default choice of the majority of couples as is evidenced by the data in the medical literature (Brakman & Weaver, this volume). It is also the dispositional choice of some Catholic scholars who argue against the morality as such of embryo adoption (Tonti-Fillippini, 2003; Pacholczk, this volume). As Brown and Eberl (this volume) argue, though, the choice of continued storage is "ultimately a condemnation to

---

<sup>11</sup> This account assumes a serious physical or mental condition that precludes gestation by the genetic mother. The demands of virtuous stewardship in this regard require more development than is possible here. Future work on stewardship and embryo adoption needs to attend to the moral evaluation of situations not neatly characterized by conditions such as "unable" to gestate.

<sup>12</sup> See Berkman and Carey (this volume) for a more exhaustive treatment of the legitimacy of the ordinary/extraordinary distinction for allowing frozen embryos to die by thawing.

death and, at the very least, a rejection of the positive duty to safeguard such embryos” (this volume, p. 105). On the account of virtuous stewardship, choosing to allow one’s embryos to remain in storage displays a failure of fidelity to God and a lack of charity and solidarity for the embryos.

Given the morally problematic nature of all of the available alternatives, embryo adoption is a reasonable and morally preferable choice if the genetic parents are unable to agree to also become the gestational and social parents of the embryos. Virtuous stewardship demands that those couples *care for* their embryos and *share with* them the goods that will allow flourishing as human beings – hence relinquishment to others for an opportunity to be born and to have a family.<sup>13</sup> The policy of relinquishing all embryos for adoption by others in these circumstances is known as mandatory donation. Currently it is legally required in the USA in the state of Louisiana only but it is the law of the land in some countries (See Cheely, this volume).

Some have argued however that mandatory donation unjustly denies the liberty rights of the genetic couple. This argument is not valid according to the ethics of Christian stewardship because the embryo is not a possession, but rather human life entrusted. If we grant that the embryo has the same rights and standing as a born child, then it follows that the way in which a child must be treated, so must the embryo. Just as biological parents must either fulfill their obligations to their children, or place their children for adoption, couples with frozen embryos must either fulfill their obligations of stewardship to their embryos, or they must place their embryos for adoption, i.e., mandatory donation.

Many couples with frozen embryos however cannot bring themselves to donate embryos to others for they see it as a decision to allow “their” children to be raised by others (de Lacey, 2005). Mandatory donation puts couples with frozen embryos in a psychosocial position in which they do not wish to be. Even though as Mahowald (this volume) says, this “may mean that either or both of the progenitors may become a genetic parent without having agreed to do so, it does not mean that either of them thus becomes a social parent, a role that carries considerably greater and longer-lasting responsibilities than those which the progenitors have already fulfilled” (p. 194). The problem here is that the couples see the children who will be born as “theirs” because these children will be genetically (but only in some cases) related to them or genetically related to their already born children. But perhaps it is more accurate to say that the sense of being “theirs” is derived from a sense of ownership. This is of course contrary to the views of stewardship.

Finally, virtuous stewardship may also require the genetic parents be involved in the choice of the family who adopts the frozen embryos they caused to exist. More needs to be said about this than is possible here but part of their considerations as stewards of the embryos may reasonably include choosing a family who will have the necessary spiritual as well as emotional and material resources to

---

<sup>13</sup> Cf. Berkman and Carey (this volume) for an account of embryo adoption as an act of reparation by the genetic parents to their embryos.

become the child's parents. Ethically, it would also call the couple to a charitable response to any future needs of genetically related children, including perhaps a willingness and openness to be contacted by the child(ren) in the future if their overall mental or physical health requires it. All of this may be understood as the genetic couple engaging in solidarity with the child(ren) who may be born and with the adoptive family.

## 5 Stewardship and the Embryo Adopting Couple

### 5.1 *Bad Stewards?: Recasting the Arguments Against Embryo Adoption*

I share the view with my interlocutors that the ideal way of becoming pregnant is subsequent to an act of marital sexual intercourse. I also share the view that it is clearly against the teachings of the Church to intentionally create human life not as a direct result of an act of marital sexual intercourse. But just as traditional adoption may be a response by a couple to the existence of an infant whose biological parents are unable to be its social parents, embryo adoption may be a praiseworthy response by a couple to the existence of an embryo whose genetic parents are unable to be its biological and social parents. The crux of difference between these situations for many of course is that with embryo adoption a couple consent to a wife becoming pregnant not as a result of marital sexual intercourse. Embryo adoption might be stewardship of a human embryo, but how could this be responsible stewardship of God's gift of marital exclusivity and of the woman's reproductive self? This framing appears to capture for example the kind of concerns for that P acholczyk has (this volume): "Yet I would argue that a woman does not really have this putative right to turn over her procreative powers to an extrinsic embryo in this way, since those powers do not in fact belong to her alone, or even to her and her husband alone, but to their marital union, the essential properties of which are outside the determination of the participants" (p. 71). Cast in the light of stewardship, P acholczyk's argument stipulates that we may not use that which has been entrusted to us in ways other than intended by God. This is true even if so doing helps us care for and share with another who has been entrusted also to us. In the case of embryo adoption it "would appear to violate the language of a woman's body, because the very mode of self-giving written into her body is subverted as she dissociates pregnancy from marital self-donation" (P acholczyk, this volume, p. 73). Seen in another way, we may not violate the gifts of bodily and marital unity in pursuit of fulfilling the duty to aid others. To do so is at a real level to be like Adam and Eve at the Fall – to seek *to be* God.

Is it necessarily true that embryo adoptive mothers and couples are bad stewards of the goods of motherhood and marriage? I turn now to an initial formulation of a defense of embryo adoption as a possible instance of good stewardship.



## 5.2 *The Conditions for the Possibility of Being Good Stewards*

In response to the critique of embryo adoption from marital exclusivity: since fertilization has already occurred, the embryo adopting couple does not procreate when they welcome embryos to be gestated (Cf. Brown and Eberl, Tollefsen, and Kaczor, all this volume).

In regard to good stewardship of the woman's reproductive self, let us consider an analogy from (US) legal doctrine. There is a concept known as *cy pres* which comes from the Norman French, "*cy pres comme possible*" meaning "as near as possible,"<sup>14</sup>

where a gift is made with a clear charitable intention, the gift will not be allowed to fail because it cannot be applied to the particular purpose originally intended, if such a purpose was specified. In such a case the law will substitute another way of applying the gift that is as nearly as possible to what the donor wanted. (<http://historical-debates.oireachtas.ie/D/0152/D.0152.195507050033.html>)

This legal doctrine stipulates that by law the trustee must fulfill the spirit of the donor's request even if meeting the specific terms of the trust are now impossible.

I posit a weak sense of *cy pres* as support for embryo adoption: What if conception will never follow from a particular couple's conjugal acts? Let us grant that a given couple is always open to the transmission of new life, but due to, say, a lack capacitated sperm or ovarian functioning, conception will never be possible for them. Let us furthermore say that this couple has a clear vocation for parenthood, and while considering how best to meet this vocation, they find themselves with a growing concern for the embryos who exist in an undignified frozen state. This husband and wife might put the matter something like; "We have the ability to gestate a child but we will never create life. There are humans who are alive but who have been denied a maternal environment and who need love and nurture which we can provide." This couple might even pause to think how this is not what they had planned originally, that to consent to an embryo adoption pregnancy will entail sacrifices (physical and emotional) on their part, and that in a morally perfect world, there would be no frozen embryos. Is it not an imitation of Christ to come forward to give one's self to vulnerable human life?

Becoming pregnant in the context of such a marital decision could be in keeping with a stewardship of the woman's reproductive self and of their marriage along the lines of *cy pres* – her reproductive self cannot enjoy the goods of procreation in the manner intended by God and nature, but the vocation to parenthood of husband and wife and the wife's ability to nurture early human life may allow them to fulfill these gifts in the context of vulnerable others who cannot flourish without parents and whose genetic parents are unable to provide for them and to whom this couple also are responding in charity and with solidarity – these aspects may be seen as necessary and only together jointly sufficient entrusted "goods" justifying embryo adoption. I argue therefore that it is possible that a married couple with infertility may

---

<sup>14</sup>I wish to thank Rima Youakim Mullins for suggesting the relevance of *cy pres* for my analysis.

act as good stewards of their bodies, marriage, and of vulnerable others if together as an expression of their marital unity and in solidarity with and charity for the frozen embryos, they chose to adopt embryos and raise any children born to them. This decision seems more completely and accurately described as an act of faithful stewardship of their marriage, of a woman's reproductive capacities in the context of infertility, and of the charge to share the goods of life with vulnerable others than it does described as "seeking pregnancy outside of the conjugal act" (Althaus, this volume, p. 55).<sup>15</sup>

To be sure, using the situation of frozen embryos as moral cover for one to access fertility treatments "legitimately" is not being a good steward. Eric Gregory (this volume), for example, raises theological reasons for concern about the possibility not merely for self-deception by those who desperately want children, but even outright vice on the part of couples hoping for an embryo to adopt. While I can see that the stipulation of having infertility for couples who may licitly embryo adopt could create a situation ripe for precisely the kind of outcome Gregory worries about, we must remember that such concerns bear on how we will provide safeguards in the practice of embryo adoption. They do not tell against its inherent permissibility, just as vicious reasons for any given couple to adopt a born child do not tell against the morality of traditional adoption. My purpose here is to show only that there are some instances of embryo adoption that are praiseworthy responses to God's call to caring for and sharing with others.<sup>16</sup>

Furthermore, after considering the arguments which hold pregnancy licit only as a result of freely chosen marital act, I am struck by how such arguments have the appearance of being fueled in some part by the concern that allowing embryo adoptions will open the door to further objectification of humanity or that embryo adoption itself as a practice is yet another product of our cultural impoverishment. I am sympathetic to these concerns and I do agree that the human body has moral significance. Decisions about the moral permissibility of embryo adoption demand reflective and careful critical analysis. And yet, this overwhelming focus on the nuptial body in the arguments against embryo adoption in some very important ways reminds us of the story of the servant who buried his talents in the ground in fear of losing the Master's wealth. In an effort to prevent the master's wrath, to not lose what was entrusted, the servant focuses solely on not letting anything happen to the money he was given and not on the charge to build up the master's holdings. The master is not merely disappointed in the third steward's attitude, he is outraged.

---

<sup>15</sup> Cf. Williams (2005) and Berkman and Carey (this volume). Williams sees embryo adoption as licit when characterized as an expression of charity for the frozen embryos. Berkman and Carey argue, I think rightly, that the practice ought also to be understood as an expression of solidarity by the adoptive couple, both with frozen embryos and with the donating couple.

<sup>16</sup> My argument in favor of embryo adoption assumes that the practice will occur both with proper intentions by the adopting couple but also only under certain circumstances. For detailed discussions of these legitimizing conditions, see both Stempsey and Berkman and Carey this volume.

I see the focus of arguments against embryo adoption in much the same way, as coming from deep and in many ways legitimate concern – fear of looking like surrogacy, fear of letting people think there is a nice Catholic fertility treatment, fear of alienating or distancing husbands. The ideal context for pregnancy is as a result of marital embodied love to be sure. It may seem more prudent, more faithful to God and to our charge of stewardship of our bodies and the goods of marriage to steer clear of this (albeit well intentioned) practice. The problem, however, is that we have been told that the risk-averse steward, is not just an uninspired steward, but “lazy and wicked.” Christian stewardship demands courage, creativity, charity and solidarity with others, especially the vulnerable. Those who fail to protect the vulnerable and who fail to care for God’s property will be held accountable and punished. Those who try to do God’s will (like the first and second stewards in the parable) will be rewarded with the Kingdom of heaven. Those who live in fear of wrongdoing like the third steward will be cast out. My view is that embryo adoption in the right circumstances and with the proper virtues may be fulfilling the charge to be the good steward.

However, even supposing a weaker claim, one that admits to moral uncertainty regarding a pregnancy with an adopted embryo: When we have infertile couples (who have the will to fulfill their charge to be fruitful but lack the ability) and human life at stake, denying categorically a life affirming and dignified option for these most vulnerable of humans on the basis of arguments derived from texts meant to address quests for the creation of human life, lacks perspective and in effect endorses a view of stewardship that is impoverished. When called to account at the Last Judgment, will the defense of not being sure about the morality of embryo adoption suffice or will those whose actions were “feeding the hungry” and “housing the homeless” and “clothing the naked” be praised as were the first two stewards? I cannot answer this definitively of course, but based on: (1) the questionable soundness of the arguments against embryo adoption offered thus far; (2) the biblical warrant regarding responsible stewardship; and (3) the specific virtues of stewardship detailed in scripture and Catholic social teaching, I am convinced that embryo adoption meets the demands of the Beatitudes.

## 6 Conclusion

As I write this chapter, there has been no official pronouncement regarding embryo adoption by the curia of the Roman Catholic Church. I offer my reflections here in a spirit of proposing reasonable and considered arguments to assist in the formation of the Church’s teaching on what is now becoming a highly visible and controversial practice.

My work first calls attention to a problem implicit in a set of argument opposing embryo adoption, the claim that traditional adoptive motherhood is not

“actual,” “real,” or “categorical” motherhood since it is not genetic or biological motherhood. I have demonstrated that such views are at the very least unsupported in Catholic teaching, and more likely than not, inaccurate portrayals of the Church’s view on the moral primacy or even necessity of genetic/biological connections for becoming a *real* mother. Therefore, arguments against embryo adoption claiming that the practice violates the right of husbands and wives are wrong to the extent that they necessarily entail the claim about the inferior status of adoptive motherhood; moreover, to the extent such arguments against embryo adoption serve to perpetuate stigma, they are themselves performing an injustice to families formed by adoption.

Second, I sketched a first approximation of an ethic of stewardship. Christian stewardship entails taking care of creation by exhibiting the virtues of fidelity, trustworthiness, courage and creativity/risk taking in the fulfillment of such responsibility. Good stewardship also requires sharing with others the goods of creation by responding to God’s call to have charity for and to live in solidarity with our neighbor. Being a good steward of one’s frozen embryos demands either gestation or the relinquishment of the embryos to another couple for adoption. Being a good steward of one’s body as a woman and of the goods of marriage may include embryo adoption at least in the case of a married couple experiencing infertility who together discern a vocation to parenthood in the context of charity for and solidarity with frozen embryos who do not have a chance to be gestated by their genetic parents.

Finally, I offer the consideration that arguments stipulating embryo adoption inherently immoral may themselves be failures of good stewardship – evidencing an insufficient response of courage, creativity, and risk taking in the face of great human need and injustice.<sup>17</sup> In the first encyclical of his papacy, Pope Benedict XVI said,

[L]ove for widows and orphans, prisoners, and the sick and needy of every kind, is as essential to her [The Church] as the ministry of the sacraments and preaching of the Gospel. The Church cannot neglect the service of charity any more than she can neglect the Sacraments and the Word. (*Deus Caritas Est*, p. 29, no. 22)

Do frozen embryos count among the “needy of every kind?” I believe they do. Is it possible (given the sexual and social teachings of the Catholic Church) that embryo adoption could be an instance of good stewardship of these “needy” as well as of one’s marriage and body? I believe it can.<sup>18</sup>

---

<sup>17</sup> It is beyond the current scope of this chapter, but future analyses must include a discussion of the stewardship duties of the Church itself regarding embryo adoption (Cf. Stempsey, this volume).

<sup>18</sup> I wish to thank Joseph Boyle, Alan Levine, Christopher Tollesfen, and Darlene Weaver for reading an earlier version of this manuscript and for their helpful comments and suggestions.

## References

- Benedict, XVI (2006). *Deus Caritas Est* (God is Love). Encyclical letter, Vatican City: Libreria Editrice Vaticana. Washington, DC: United States Conference of Catholic Bishops.
- Berg, T.V. & Furton, E.J. (2006). 'Afterword,' in T.V. Berg & E.J. Furton (Eds.), *Human Embryo Adoption: Biotechnology, Marriage, and the Right to Life* (pp. 327–332). Philadelphia, P A; Thornwood, NY: The National Catholic Bioethics Center and the Westchester Institute for Ethics and the Human Person.
- The Bible (2002). *New American Bible*. Washington, DC: United States Conference of Catholic Bishops [Online]. Available: <http://www.nccbuscc.org/nab/bible/index.htm>.
- Brakman, S.V. & Scholz, S.J. (2006). 'Adoption, ART, and a re-conception of the maternal body: Toward embodied maternity,' *Hypatia*, 21(1), 54–73.
- Brugger, E.C. (2005). 'A defense by analogy of heterologous embryo transfer,' *National Catholic Bioethics Quarterly*, 5(1), 95–112.
- Caldwell, C. & Karri, R. (2005). 'Organizational governance and ethical systems: A covenantal approach to building trust,' *Journal of Business Ethics*, 58, 249–259.
- Coleman, G. (1994). 'Stewardship,' in J.A. Dwyer (Ed.), *The New Dictionary of Catholic Thought* (pp. 920–922). Collegeville, MN: The Liturgical.
- Compendium of the Social Doctrine of the Church* (2004). Vatican City: Libreria Editrice Vaticana. Washington, DC: United States Conference of Catholic Bishops.
- Congregation for the Doctrine of the Faith (1988). *Donum Vitae* [Online]. Available: [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_19870222\\_respect-for-human-life\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19870222_respect-for-human-life_en.html).
- Donaldson, L. & Davis, J.H. (1991). 'Stewardship theory or agency theory: CEO governance and shareholder returns,' *Australian Journal of Management*, 49–62.
- Enderle, G. (1997). 'In search of a common ethical ground: Corporate environmental responsibility from the perspective of Christian environmental Stewardship,' *Journal of Business Ethics*, 16, 173–181.
- Geach, M. (2006). 'The female act of allowing an intromission of impregnating kind,' in T.V. Berg & E.J. Furton (Eds.), *Human Embryo Adoption: Biotechnology, Marriage, and the Right to Life* (pp. 251–271). Philadelphia, P A; Thornwood, NY: The National Catholic Bioethics Center and The Westchester Institute for Ethics and the Human Person.
- Grisez, G. (1992). *The Way of the Lord Jesus, Vol. 2: Living a Christian Life*. Quincy, IL: Franciscan Press.
- Jegen, M.E. & Manno, B.V. (Eds.) (1978). *The Earth is the Lord's: Essays on Stewardship*. New York: Paulist Press.
- John Paul II (1995). *Evangelium Vitae* [Online] Available: [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/encyclicals/documents/hf\\_jp-ii\\_enc\\_25031995\\_evangelium-vitae\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae_en.html).
- John Paul II (1997). *The Theology of the Body: Human Love in the Divine Plan*. Boston, MA: St. Paul Books and Media.
- John Paul II (2000). *Address of John Paul II to the Meeting of the Adoptive Families Organized by the Missionaries of Charity* [Online]. Available: [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/speeches/2000/jul-sep/documents/hf\\_jp-ii\\_spe\\_20000905\\_adozioni\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/speeches/2000/jul-sep/documents/hf_jp-ii_spe_20000905_adozioni_en.html).
- Kulik, B.W. (2005). 'Agency theory, reasoning and culture at Enron: In search of a solution,' *Journal of Business Ethics*, 59, 347–360.
- Lacey, S. de (2005). 'Parent identity and "virtual" children: Why patients discard rather than donate unused embryos,' *Human Reproduction*, 20(6), 1661–1669.
- Magill, G. (2001). 'Organizational ethics in Catholic health care: Honoring stewardship and the work environment,' *Christian Bioethics*, 7(1), 67–93.
- Magill, G. & Prybil, L. (2004). 'Stewardship and integrity in health care: A role for organizational ethics,' *Journal of Business Ethics*, 50, 225–238.
- May, W.E. (2006). 'The object of the acting woman in embryo rescue,' in T.V. Berg & E.J. Furton (Eds.), *Human Embryo Adoption: Biotechnology, Marriage, and the Right to Life* (pp. 135–163).

- Philadelphia, PA; Thornwood, NY: The National Catholic Bioethics Center and The Westchester Institute for Ethics and the Human Person.
- Mitchell, L.A. (2003). 'A bibliography for the theology of the body', *The National Catholic Bioethics Quarterly*, 3(1), 164.
- Oleson, C. (2006). 'The nuptial womb: On the moral significance of being "with child"', in T.V. Berg & E.J. Furton (Eds.), *Human Embryo Adoption: Biotechnology, Marriage, and the Right to Life* (pp. 165–195). Philadelphia, PA; Thornwood, NY: The National Catholic Bioethics Center and The Westchester Institute for Ethics and the Human Person.
- Pacholczyk, T. (2006). 'Some moral contraindications to embryo adoption,' in T.V. Berg & E.J. Furton (Eds.), *Human Embryo Adoption: Biotechnology, Marriage, and the Right to Life* (pp. 37–53). Philadelphia, PA; Thornwood, NY: The National Catholic Bioethics Center and The Westchester Institute for Ethics and the Human Person.
- Quinn, K.P. (2000). 'Method in Catholic bioethics,' *Kennedy Institute of Ethics Journal*, 10(4), 353–363.
- Schotsmans, P. (2003). 'Relational responsibility, and not only stewardship. A Roman Catholic view on voluntary euthanasia for dying and non-dying patients,' *Christian Bioethics*, 9(2–3), 285–298.
- Shannon, T.A. (2001). 'Living the vision: Health care, social justice, and institutional integrity,' *Christian Bioethics*, 7(1), 49–65.
- St. Thomas Aquinas (1988). '*Summa Theologiae*, The Treatise on Law,' in P.E. Sigmund (Trans. and Ed.), *St. Thomas Aquinas on Politics and Ethics* (p. 49). New York: W.W. Norton.
- Stackhouse, M.L. (1987). *Public Theology and Political Economy: Christian Stewardship in Modern Society*. Grand Rapids, MI: Wm. B. Eerdmans Publishing Co. for Commission on Stewardship National Council of the Churches of Christ in the USA.
- Sutton, A. (2002). 'Revisiting reproductive technology's slippery slope in the light of the concepts of imago dei, co-creation, and Stewardship,' *Ethics & Medicine*, 18(3), 145–154.
- Swartley, W.M. (1978). 'Biblical sources of stewardship,' in M.E. Je gen & B.V. Manno (Eds.), *The Earth is the Lord's: Essays on Stewardship* (pp. 22–43). New York: Paulist Press.
- Tonti-Filippini, N. (2003). 'The embryo rescue debate: Impregnating women, ectogenesis, and restoration from suspended animation,' *National Catholic Bioethics Quarterly*, 3.1, 111–137.
- Watt, H. (2006). 'Becoming pregnant or becoming a mother? Embryo transfer with and without a prior maternal relationship,' in T.V. Berg & E.J. Furton (Eds.), *Human Embryo Adoption: Biotechnology, Marriage, and the Right to Life* (pp. 55–67). Philadelphia, PA; Thornwood, NY: The National Catholic Bioethics Center and The Westchester Institute for Ethics and the Human Person.
- Welchman, J. (1999). 'The virtues of stewardship,' *Environmental Ethics*, 21, 411–423.
- Williams, T.D. (2005). 'The least of my brethren: The ethics of heterologous embryo transfer,' *The Human Life Review*, 31, 87–98.
- Wunderlich, G. (2004). 'Evolution of the stewardship idea in American country life,' *Journal of Agricultural and Environmental Ethics*, 17, 77–93.

**Part II**  
**The Debate Engaged**

# Embryo Adoption Theologically Considered: Bodies, Adoption, and the Common Good

Darlene Fozard Weaver

## 1 Introduction

When a genuinely contested question arises in moral theology, initial analyses inevitably settle around particular lines of argument and counter-argument that rely on relevant moral claims which are presumed stable and settled. Mutual criticism, discussion, and further reflection bring more nuance and texture to these lines of argument as they also illumine those claims and teachings taken to be reliable moral markers or building blocks. What takes shape is a “debate” with more or less clearly demarcated “sides,” and subsequent scholarly entries into the contested question must traverse the debate’s terrain. Eventually, however, new routes into the question are called for and charted, as newcomers to and veterans of the debate alike begin to challenge the terms on which the conversation has settled.

In the case of embryo adoption, analyses have settled around the question whether it is morally permissible to transfer a genetically unrelated embryo into the uterus of a married woman, and answers to this question are crafted by appealing to relatively stable and settled Catholic teaching on marriage, or more specifically to the marriage “act” (i.e., heterosexual intercourse) or to the marital/nuptial significance of the human body. This essay argues that many of the heretofore available Catholic arguments about embryo adoption are methodologically flawed, problematically gendered, and theologically deficient. After developing these charges, the essay explores embryo adoption in light of theological reflection on Christ’s body and ours, adoption, and the common good. While I judge that embryo adoption is at least sometimes morally permissible, my aim here is not so much to argue for the moral permissibility of the practice, but (like Eric Gregory does admirably in his contribution to this volume) to call for and inaugurate more robustly moral *theological* consideration of the practice. More specifically, I consider embryo adoption in light of the affirmation that we are made God’s adopted children by being incorporated into Christ’s body.



## 2 Some Difficulties in Catholic Analyses of Embryo Adoption

Embryo adoption designates one particular kind of heterologous embryo transfer (HET). HET is the transfer of a genetically unrelated embryo (or more typically , embryos) into the uterus of a woman so that she will gestate and give birth to one or more children. As an instance of HET , embryo adoption, as I restrict the term here, is undertaken by a married couple with an explicit prior commitment to parent any children thus born to them; moreover, the embryos they welcome are “excess” embryos, cryopreserved or frozen embryos commissioned for in vitro fertilization which the commissioning individuals are no longer able or willing to gestate and parent (rather than embryos created with donor eggs and sperm through the initiative of the would-be adoptive parents).<sup>1</sup> Embryo adoption is therefore a response to already existing embryos, the likely fate of which apart from adoption is destruction.<sup>2</sup>

Couples adopt embryos for a variety of reasons, and it seems reasonable to think that multiple reasons and motives would operate in any given instance of embryo adoption. Some of these reasons and motives may be more or less morally worthy. Moreover, the way couples go about adopting embryos varies considerably. As John Berkman and Kristen Carey (this volume) show in their essay , embryo donors and would-be adoptive parents come together online, or through fertility clinics, or in a self-identified “embryo adoption program” like the Snowflakes embryo adoption program. There are moral dimensions to all these ways of matching genetic and adoptive parents, not to mention moral issues regarding disclosure of information to one another and to any children thus born, ongoing contact between the families, and so forth. Clinics that perform the procedure have different policies and practices; for example, the National Embryo Donation Center transfers low-quality embryos, embryos other clinics would probably not transfer, given its professed commitment “to giving every embryo the chance to develop, implant, gestate, and be born” (Keenan, this volume). These practices and policies, of course, all morally qualify any given instance of embryo adoption. Furthermore, any instance of embryo adoption is undertaken in larger social, political, legal, economic, cultural, and religious contexts which shape the practice and the parties who participate in it as moral agents. Indeed, embryo adoptions do not and could not take place apart from concrete, particular moral lives and contexts. Embryo adoptions clearly are morally complex undertakings, and thus moral analysis of the practice would need to attend to the full reality of embryo adoption in order to do justice to this complexity.

---

<sup>1</sup> I cannot here take up the matter of embryo adoptions by single women. Nor do I consider what sort of moral difference, if any, it makes whether married couples adopting embryos are infertile or not. I assume some though not all couples who pursue embryo adoption struggle with infertility , and of course current practices in infertility treatments are why we now confront the problem of excess embryos.

<sup>2</sup> The fact that embryo adoption is a response to already existing embryos distinguishes (without wholly determining) it morally from IVF and other forms of ART and from surrogate motherhood, both of which involve the deliberate creation of embryos.

Of course, just as embryo adoptions always occur in particular, concrete contexts and through the agency of particular, concrete persons, moral analyses of embryo adoption are undertaken in contexts that and by persons who are equally particular and concrete. Their social location, personal experience, religious and moral convictions and values all orient and inform their reflection. I am not suggesting that objective moral insight is therefore elusive. Quite the contrary. Reason, experience (personal and collective), and dialogue enable us better to discern and articulate truthful moral knowledge through a dialectical consideration of diverse positions in an ongoing process of advancing insights and overcoming errors and problems. It is one thing to say that claims to moral truth are merely subjective personal opinions or culturally relative inventions and another thing to say that objective moral knowledge is discovered collaboratively. Because moral insight is discovered through an inescapably collaborative process other persons may and often do furnish us with expertise, perspectives, and insights that can substantiate, flesh out, and correct our own undeveloped, skewed, and mistaken moral reflection. They also, however, may offer information and perspectives that are themselves in error, ideologically tainted, and incomplete. Surely any insight any of us may have to offer regarding a practice as novel, as peculiar, and as complex as embryo adoption is limited or partial.

Keeping in mind that my own reflection on the matter will unavoidably be partial and limited, I want to show some difficulties that I discern in dominant lines of Catholic arguments about embryo adoption. These difficulties are methodological, gendered, and theological. They vex the most prominent lines of argument that Catholics make for and against the moral permissibility of embryo adoption, lines charted by morally analyzing embryo adoption in relation to marriage, the marriage act, and women's embodiment.

First let us gain some purchase on such arguments. In a recent essay on embryo adoption (there termed "embryo rescue"), Steven Long frames his moral inquiry into the practice in terms of the permissibility "of a [married] woman taking a child conceived by another man into her womb" (Long, 2006, p. 267). Long argues that "one may not rightfully choose to share childbearing with anyone save one's spouse, as it exists for the sake of the transmission of the life conceived with one's spouse (i.e., because childbearing naturally exists for the sake of, and is necessary to, the integral procreative purpose of the generation and transmission of life)" (Long, 2006, p. 274). Similarly Tadeusz Pacholczyk argues that the "total and integrated meaning [of procreation] implies that invoking the procreative powers of the woman's body, *including the state of becoming pregnant*, is an action inherently and necessarily interwoven into the marital act" (this volume, p. 72). In other words, the sexual exclusivity of marriage centrally includes reproductive exclusivity, and because gestational motherhood belongs naturally to the procreative capacity of the conjugal act, one ought not willfully share it with someone who is not one's spouse.<sup>3</sup> A married woman therefore violates her marital union when she undergoes HET, and single

---

<sup>3</sup>The reference to willingly sharing gestation with a partner other than one's spouse is meant to distinguish morally the deliberate pursuit of pregnancy through HET and a woman's in voluntarily becoming pregnant through rape by someone other than her husband. See Long, 2006, pp. 280–281.

women and consecrated religious who undertake HET violate their respective forms of chastity (Long, 2006, p. 274).

Those who argue against embryo adoption on the grounds that it violates the sacredness of marriage and of the human body often look to *Donum Vitae* for support. *Donum Vitae* is currently the most authoritative Catholic declaration regarding the moral status of human embryos and the moral character of assisted reproductive technology. It insists that “the fidelity of the spouses in the unity of marriage involves reciprocal respect of their right to become a father and a mother only through each other” (Congregation for the Doctrine of the Faith, 1987, I). *Donum Vitae*’s claim, while not directed specifically at HET, indicates the importance of considering this practice in the context of marriage. Does heterologous embryo transfer conflict with a woman’s exclusive self-gift in marriage? Nicholas Tonti-Filippini argues that when a child is conceived through conjugal relations, the intimate union of mother and child extends and embodies the marital union of husband and wife; heterologous embryo transfer isolates the husband from this union (2006, p. 85). By it a woman chooses to unite her very self with the child placed in her womb (2006, p. 90). Importantly, this union effects an ontological change in the woman, making her a mother; gestational motherhood involves her as a unity of body and soul, and ought not be reductively understood as merely providing the embryo with a means of sustenance. According to Tonti-Filippini, “having given herself, her psychosomatic unity, faithfully, exclusively, totally, and in a fully human way *in marriage*, a woman is not free to give herself to being impregnated with a child from outside of marriage in this way, however altruistic the purpose and however desperate the plight of those to whom she wishes to give herself,” precisely because her generative capacity “*belongs to the marital union*, and hence may not be given outside marriage” (2006, p. 91). In embryo adoption a woman conceives a child outside of her marital union.<sup>4</sup> For this reason, heterologous embryo transfer is “akin to adultery” (2006, pp. 91–92). Notice that Tonti-Filippini moves beyond arguing that HET conflicts with a woman’s psychosomatic integrity. He also goes further than arguing that HET is illicit because it involves seeking pregnancy apart from marital intercourse. He contends that HET is a form of marital infidelity on the part of the married woman who pursues it. He is not alone in arguing this (Althaus, this volume; Geach, 1999, 2006; Long, 2006; Pacholczyk, this volume; Oleson, 2006).

Arguments for the moral permissibility of embryo adoption describe differently the choice a woman makes when she pursues HET, emphasizing her choice to nurture or rescue or adopt the embryos she welcomes. According to William May, when a woman chooses to engage in HET, “the moral object, which is also the *proximate end* of her deliberate choice – is precisely *to transfer this unborn baby from the liquid nitrogen to her womb and to nurture it there until birth*. This is the *means* she chooses

---

<sup>4</sup>Note that Tonti-Filippini argues that the transfer of the embryo into a woman’s uterus constitutes conception. John Berkman (2003a) argues against this notion. I take Berkman to be correct, but find disagreements about when conception occurs in HET to exemplify the methodological problems I discuss later.

to save the child's life, and the saving of its life is the *further* or *remote end* of her act. This freely chosen object includes her being pregnant, insofar as the pregnancy is required in order to nurture the child in her womb" (May, 2006, pp. 143–44; see also Brugger, 2006, p. 200). This freely chosen object does not violate human sexuality or marriage/the marriage act, because "the woman is *not* choosing to give herself in an act of genital union to someone other than her spouse, nor is she choosing to engage in the conjugal act or in *any* sexual act" (May, 2006, p. 145). John Berkman argues that, "in having an orphaned embryo implanted in her womb with the commitment to raise the child if it survives to birth [a woman] is consenting to become a mother through adoption. In adopting the orphan embryo she is offering a uniquely important, intimate, and necessary form of nurturing" (Berkman, 2002, p. 129).

Moral theologians who support embryo adoption also challenge the way opponents of the practice construe the conjugal act, procreation, and pregnancy. John Berkman, for example, argues that Tonti-Filippini's argument makes conception refer not to the *coming to be* of a child, but to a woman's *having an embryo* in her womb. Marital/reproductive integrity may prohibit the *conception* of a child outside of conjugal relations, but this is not to say it requires *becoming pregnant* only through them (Cf. Berkman, 2003b). The latter involves not conception, but "a particular form of nurturing an existing life up until birth" (Berkman, 2002, 129). Similarly, Christopher Tollefsen argues that pregnancy is not part of procreation. This is because upon fertilization "generation is over, and a being with its own biological causality now exists" (this volume, p. 97). Tollefsen rightly goes on to say that arguments against embryo adoption either fail to consider adoption substantively as a supplementary (much less alternative) moral framework, or they reject it as a legitimate description on the basis of claims that denigrate adoption.

More could be said about particular disagreements within embryo adoption debates (e.g., comparing embryo adoption to wet nursing or to situations wherein a victim of rape gestates a child who is not her husband's), but I trust the above sketch makes sufficiently clear the main Catholic arguments against and for the moral permissibility of HET. Let me turn to the methodological, gendered, and theological difficulties I discern in many such analyses.

## 2.1 Method

Thus far Catholic debates about embryo adoption operate on narrow terms; the central question that frames and drives the debates is whether HET is inherently morally permissible (i.e., is it licit to transfer a genetically unrelated embryo into the uterus of a married woman?). Reductive and misplaced moral arguments unfortunately result from this way of *framing* moral inquiry into embryo adoption (i.e., as if we can determine the moral character of embryo adoption as a human practice by identifying the inherent moral status of HET; see Weaver, forthcoming) and *undertaking* that inquiry (by specifying the inherent moral status of HET with too much or too little attention to reproductive physiology or agential understanding).

To begin, the narrow focus on HET's inherent morality constricts moral analysis of embryo adoption in ways that tend to over or underdetermine the moral significance of the human reproductive system. The moral character of embryo adoption simply does not rest on stipulating whether or not pregnancy is part of procreation. These disputes unfortunately do not play the intentional and interpersonal dimensions of embryo adoption. Arguments against embryo adoption overdetermine the moral significance of the human reproductive system. Although they mean to relate reproductive integrity to marital exclusivity, they remove it from the intimate, volitional, embodied relationship in which conjugal lovemaking and fecundity find their reality, and risk making reproductive integrity an absolute value. The mutual self-gifting of spouses becomes an abstraction rather than a relationship knit together through communication, shared activities, joint decision-making, sexual intimacy more fully understood, and so forth. Arguments for embryo adoption typically underdetermine the significance of this integrity. HET is not an act of genital union, as May (2006) points out, but to say also that it is not any sort of sexual act does risk separating gestational motherhood from a woman's sexuality as a whole. More to the point, arguments in favor of embryo adoption need to provide moral theological accounts of embodiment that explore embryo adoption in relation to the goods and ends of human sexuality and marital fidelity rather than try to ground moral judgments about embryo adoption in physiological criteria.

Second, going treatments of embryo adoption tend to over or underdetermine the intentions or purposes of married women who pursue HET while also ignoring her husband as an agent in the enterprise. Arguments against embryo adoption that overdetermine the physiological aspects of the practice tend to underdetermine the intentional aspects. They argue that the moral "object" of a woman's choice in HET is not to adopt a child with her husband, even if this is what they desire, what they understand themselves to be doing, and they have committed themselves to parent any children thus born to them; rather, the woman's choice is to seek pregnancy outside the conjugal act. Such arguments are helpful for building a case against embryo adoption, because they render the aim of adoption as a motive, a praise-worthy-in-itself desire that is not *part of* the agent's own action but merely *attends* it.

It might therefore appear that arguments like these are susceptible to the charge of "physicalism" which is so often lodged against official Catholic sexual ethics. The charge of physicalism typically expresses the criticism that a moral action is described and evaluated on the basis of the act "in itself," that is, as a physical occurrence, without knowing the person's intention or considering all the morally relevant circumstances and consequences. Physicalism makes for poor moral assessments of particular sorts of actions because it elides the agent's intentional participation in her own action. Moral theologians arguing against embryo adoption are not subject to the charge of physicalism because they generally *do* attend to the choice a woman makes in HET. In their judgment this choice is "disordered." The problem, as I see it, is that these arguments circumscribe the object of a woman's choice to adopt an embryo to the choice of HET and subsequently evaluate its fittingness not in relation to the human and common good but in relation to the integrity of her reproductive system. They go on to specify the telos of *that* system in reference to her husband,

but only after *first* excluding him as a fellow agent in the project of embryo adoption. Arguments against embryo adoption need better to attend to the intentions of married couples who together pursue embryo adoption and relate these intentions to a more fulsome account of the human and common good.

Arguments in favor of embryo adoption need to do likewise. They tend to overdetermine a married woman's intention to adopt, rescue, or nurture the excess embryos she receives. Simply because a couple says they are adopting embryos does not change the fact that when a woman chooses to undertake embryo adoption she chooses to seek pregnancy apart from engaging in a conjugal act with her husband. Arguments *against* embryo adoption challenge those who find the practice morally permissible to show how HET as a means to the end of adoption/rescue is morally fitting in relation to a woman's psychosomatic integrity and to her marriage. Insofar as pro-embryo adoption arguments overdetermine the intention to adopt or rescue they beg this question. In many other ways they reinforce its unfortunately narrow circumscription of the means and the specification of the goods of psychosomatic integrity and marriage in terms of the human reproductive system. Moreover, neither the "seeking pregnancy ..." description, nor "rescue," (Grisez, 1997) nor "adoption" comprise the only true description of one's choice. Indeed, moral inquiry into embryo adoption goes awry methodologically if it pursues one single true moral description of the practice. Analyses of embryo adoption would do well to be patient of a plurality of descriptions and multiple "objects" of moral choice. They might help to keep in view the many facets of the practice and require us to attend to the interrelation of various human (social) goods.

Finally, by reducing embryo adoption to the act of HET Catholic analyses of the practice isolate it from the contexts that shape the practice, the agents who participate in it, and our moral consideration of it. The cultural, political, economic, and gendered contexts in which embryo adoption arises as a possibility and takes place impinge morally upon the practice. Economic considerations, for example, bear materially and not merely incidentally on why there are excess embryos, who seeks to donate or adopt embryos, how embryos are handled and how embryo adoptions are conducted, and so forth. When such factors are excluded from moral analysis in favor of determining the inherent moral status of HET, moral analysis risks evaluating an abstraction and not a human action, and, moreover, evaluating it in terms of additional abstractions rather than within human contexts. The various contexts in which embryo adoptions occur also influence our moral consideration of the practice, yet the particular kind of Catholic focus on the inherent moral permissibility of HET ignores this influence. Cultural attitudes regarding kinship, marriage, adoption, and technology, for example, then color our moral consideration of the practice absent self-critical examination of these attitudes. This is particularly unfortunate with regard to gender, which I address below.

We would do better to ask whether embryo adoption is a social practice that betrays respect for human embodiment, for men's and women's equality, for vulnerable human life, marital fidelity, welcoming of children, and social justice, that affirms familial ties but refers them to the common good and to God. Proceeding in this fashion fittingly enlarges our consideration of the practice and the terms on which we evaluate it.

## 2.2 Gender

The second criticism I want to register against many Catholic treatments of embryo adoption concerns issues of gender and sexism. Because, as I noted above, moral theologians who engage contested questions are particular and concrete persons located in particular and concrete circumstances, our reflection can be shaped for better or worse by personal experience and upbringing, which are in turn shaped by the attitudes, beliefs, customs, and power relations that structure one's society. Because patriarchal attitudes and value judgments are firmly entrenched in Western<sup>5</sup> social structures, it is possible and likely that they operate in Catholic and non-Catholic arguments about embryo adoption, whether these arguments are cast in terms of respect for the moral significance of women's embodiment or in terms of the priority of women's intentions and purposes. And yet Catholic writings on embryo adoption pay no attention at all to gender analysis or feminist theology (Mahowald, this volume, is, I believe, the first treatment to do so). I imagine some thinkers who employ Pope John Paul II's (1981) theology of the body, or who argue against embryo adoption as a form of marital infidelity might claim that their arguments stem from an under-appreciated respect for women that is consonant with some forms of feminism, and they may well be right. But his theology of the body is one theological anthropology among many others in Catholic tradition, and even if it is true that the human body has a nuptial character and significance, it does not follow that this insight is immune from misapplication and abuse (see Kerr, 2007). My general point is that the total failure to engage feminist perspectives while arguing what women may or should not do with regard to bearing children is dangerous if not irresponsible. More specifically, this neglect of feminist perspectives in treatments of embryo adoption is problematic for several reasons.

To begin, gender issues number among the reasons there are excess embryos and embryo adoptions in the first place. Women's value as women remains overwhelmingly tied to their reproductive capacities. "Women are presented from birth with images of mothering as crucial to their identity, with pregnancy and childbearing as the culmination both of their sexuality and of their relationships of intimacy, and of fertility as a sign of youthfulness, desirability, and worth" (Cahill, 1996, pp. 245–46). Infertile women understandably feel pressured to consider assisted reproduction, or may be pressured to pursue it by husbands who are infertile or subfertile and who are, at least initially, unwilling to pursue traditional adoption. Because oocyte retrieval is invasive and costly, and because in vitro fertilization success rates are low, the development of embryonic cryopreservation methods unsurprisingly has led to significant numbers of "excess" cryopreserved embryos. An effective and comprehensive response to the question of embryo adoption should include attention to the gendered forces that help to create the problem.

---

<sup>5</sup>It is worth noting that the problem of excess embryos (which is what gives rise to embryo adoption debates in the first place) is largely a problem facing industrialized Western cultures.

Second, Christian tradition has contributed to, sustained, and justified gender roles and patriarchal relations, and too often continues to do so today, even though the tradition contains resources for exposing and critiquing them. Christian theology and practice have supported the denigration and vilification of women's nature, their subordination in patriarchal marriage and kinship relations. The Church has been, at best, slow to respond to sexual and domestic violence and to the disproportionate burdens poverty places on women, and slow to support women's social equality to men. Because embryo adoption is a peculiar practice that entails accounts of and value judgments about women's nature, marriage, infertility, assisted reproduction, adoption, and motherhood, moral theologians ought to engage feminists better to discern and deconstruct the influence of patriarchy in the practice of embryo adoption and in our moral reflection on it. Feminists who engage Christian tradition are neither monolithic nor immune from their own forms of complicity with attitudes and value judgments that hinder and harm women. What I am calling for is a critical appropriation of feminist theory and theology in order to revise Christian tradition by its own best insights regarding the equality of men and women, and to bring these insights to bear on embryo adoption and related moral issues.

Third, arguments against embryo adoption on the grounds that it violates marital fidelity and women's embodied dignity directly and indirectly construe women as passive receptacles for men's "seed." As Tadeusz Pacholczyk puts it, "when we speak about the procreative powers of the woman, these include her ability to receive the seed, the ejaculatory gift of her spouse exclusively through a marital act, and to receive that gift in a way that is not intentionally closed to the possibility of its extended fruitfulness in pregnancy" (Pacholczyk, this volume, p. 71). Besides relying on a biologically outdated model which suggests men play a more causal role in conception than women do, women's "powers" here are construed negatively, not as anything they do or contribute, but as something they do *not* do – prevent the male seed from taking root and growing. Mary Geach identifies the male's part in the marriage act as that of being the impregnator; the woman's part is the "act of admission which is of a kind to make one pregnant," that is, "the giving up of the body to the impregnator" (1999, p. 345). This way of rendering men's role in conjugal love conjures an image of a cape-donned husband with a large "I" emblazoned upon his chest, to whom the woman submits her body for penetration and impregnation. Whatever talk of *mutual* self-gifting there might be, conjugal love is nonetheless described in ways that suggest a man gives part of himself and a woman gives all of herself, that a man begets children and a woman bears them, indeed, that this is what women are made and meant to do. Not only does this dualism of activity and passivity work covertly and explicitly to shore up traditional gender roles and patriarchal relations, it bears directly on my next point.

Fourth, arguments that embryo adoption violates marital fidelity and women's embodied dignity are centrally yet uncritically concerned with securing a husband's paternity. Recall the way Long frames the moral character of embryo adoption in terms of the question "of a [married] woman taking a child conceived by another man into her womb" (Long, 2006, p. 267). Did this "other man" conceive the child



alone? What became of the genetic mother? What about the adoptive mother's husband? It is easier to argue that he is excluded and therefore wronged in embryo adoption when the moral question asked of the practice already excludes him and implies infidelity on the part of the adoptive mother.

In some arguments against embryo adoption the fetus in the womb and/or the clinician who "impregnates" a woman can appear as the adulterous third party. Tonti-Filippini admits some discomfort when he applies the language of infidelity to describe the woman's choice to allow a clinician to impregnate her, but he nevertheless says, "by infidelity I mean only that she is inviting the clinician to bring about pregnancy in her when she has already willed that power exclusively to her relationship with her husband and within her marriage" (2006, p. 94). He goes on to argue that "the child and the mother in a sense become two in one flesh in a way that is not ordained by God or dignified by being the embodiment of the love of the child's parents. Rather than being a sign and symbol of the love of the spouses, the child is unrelated to their conjugality, and his or her presence then becomes a possession of the woman's body, a possession not dignified by being of the marriage" (2006, p. 101). Casting a baby as an adulterous rival plays off an exaltation of the gestational bond (which I discuss next) as one in which the mother gives herself completely to the child she carries, and suggests that her self-gift to the baby is tolerable only when the baby is her husband's, for then when she gives herself to the baby she serves and reaffirms her belonging to her husband. I am certainly not saying that it is good for any spouse to conceive children with a third party. But the suggestion that in HET a married woman commits a kind of adultery with the embryo she welcomes or with the clinician who performs the embryo transfer – while also leaving her probably willing and supportive husband free from moral sanction – is not really an affirmation of marital fidelity or women's embodied integrity. Rather, it is an expression of patriarchy, part of a conception of conjugal relations in which men and women are not equally creative partners.

Equality is not sameness, and arguments such as these endeavor, I believe, not only to attend to the integrity of human procreation but also to differences between men and women with regard to it. Women gestate children and men do not. Hence, Althaus argues that "in and through the body of the woman" the "bodily contribution of the father assumes fleshness in the body of the child. While the child is gestating within the woman, the father's conjugal contribution and his *actual* paternity remains intact and is sustained and develops. He is absolutely reliant on the woman (his wife) to bring the fruit of their conjugal union to birth" (this volume, p. 61). It is true that biological fathers depend upon women to gestate their children, but this is all the more reason to cultivate a hermeneutics of suspicion toward moral arguments regarding childbearing as these may serve ideas and structures that control women's reproductive capacities.

Fifth, sacralizing gestational motherhood can be just as sexist and damaging to women as denigrating it. Opponents of embryo adoption criticize defenders of the practice for rendering pregnancy or gestational motherhood in merely biological terms (Oleson, 2006); by reducing the moral significance of human gestation we do court the instrumentalization and commodification of women's gestational labor.

Yet sacralizing gestational motherhood also courts harm. For instance, when we idealize gestational motherhood we can shame and isolate women who give birth but do not feel an immediate and overwhelming attachment to their child, or who suffer post-partum depression, or who struggle with the very ordinary yet very powerful grief and anger that easily accompany pregnancy and caring for an infant. We feed stigmas that make women who place their children for adoption appear unloving and irresponsible, women who cannot bear children feel defective, and women who adopt seem less than “real” mothers. We marginalize fathers and stoke the jealousy they can often feel regarding the celebrated (and time and energy consuming) mother–child bond. Gestational motherhood has moral significance and value, but our attempts to articulate that significance and value are culturally constructed and this is no less true when those attempts proclaim women’s nature or special “genius” in ways centered on the capacity to gestate.

By engaging feminist theories and theologies Catholic analyses of embryo adoption could be made more intelligible, responsible, and persuasive, as well as more faithful to prophetic Christian insights into the fundamental equality of men and women. Catholic sexual ethics contain rich insights and a wealth of countercultural affirmations that badly need more effective communication. Explicating those insights in careful and self-critical collaboration with feminist work in theology and other disciplines would enrich and advance reflection on and practical responses to embryo adoption and the social factors that give rise to it.

### 2.3 *Theology*

Many Catholic discussions of embryo adoption are theologically impoverished. It takes only a moment’s consideration of the arguments reviewed here to discern how little theological reflection they entail. They are primarily natural law arguments in which theological discussion figures minimally if at all. The theology of the body which provides the point of departure for some arguments about embryo adoption often does not theologically inform or shape them beyond the initial point that conjugal love entails making a total gift of oneself to one’s spouse. Catholic theological views of marriage are assumed but usually not theologically explicated or engaged beyond the affirmation that we ought never deliberately separate the unitive and procreative dimensions of conjugal love. Moreover, Catholic analyses of embryo adoption make virtually no use of scripture and ignore salient theological frameworks in Catholic tradition (Brakman & Weaver, and Brakman, this volume). Long makes only two passing references to God in his argument against embryo adoption. Geach refers obliquely to the “creator” in one essay (1999) and briefly to Mary’s pregnancy in another (2006). Althaus (this volume), Tonti-Fillippini (2006) and Berkman’s most recent work on embryo adoption (2006) do better, but thus far Eric Gregory’s contribution to this volume is the most robustly theological consideration of embryo adoption I have yet to see. In general, the arguments about embryo adoption, for and against the practice, are regrettably removed from any sustained theological

reflection on the world in which we live our sexuality, in which marriage and parenthood are created, fallen, yet redeemed human bonds.

When arguments about a contested question like embryo adoption proceed this way they not only *imply* that God makes no difference to how we understand embryo adoption or how we go about trying to understand it, the arguments in fact *forfeit* that difference. God really is the creator and author of life, really is our origin and end, really is the one who reconciles us in Jesus Christ and lives among us in the Spirit. God really does come to meet us in the concrete particularities of our world and in our attempts to “scrutinize” the “signs of the times” and “interpret” them “in the light of the Gospel” (*Gaudium et Spes*, no. 4). And this God alone is the final and comprehensive norm for human life in all its aspects. I do not deny that we can discover some moral insights into a matter such as embryo adoption without actively referring it to God; for instance we can appeal to moral principles such as nonmaleficence as we consider the interests of various parties to embryo adoptions. Moreover, as I noted already, the available Catholic arguments for and against embryo adoption do presume theologically informed aspects of Catholic moral tradition regarding the exclusivity of marriage and the dignity of human embryos. Nevertheless, rather than revisit these theological underpinnings for fresh insight and resources to examine critically one’s assumptions, perspectives, and warrants, going arguments fail to “do” theology as a mode of moral reasoning, ignoring scripture and enlisting tradition only selectively. When our moral inquiry proceeds this way we cannot discover the difference God makes to understanding the practice of embryo adoption (and to our *all* our thinking about it) through his ongoing and active relating to the world.

Let me extend and endeavor to show these points by sketching three interlocking theologies.

### 3 Christ’s Body and Ours

The body of Christ refers to the body Christ assumes in the Incarnation, the body he first gives in his ministry and subsequently gives on the Cross, the body resurrected by God and ascended into heaven. The body of Christ refers as well to the Church, that is, the Christian community. “Christ’s body,” says Paul Griffiths, is “the most real of all bodies. . . . Among other bodies, it is this one that for Christians is of primary and unsurpassable significance, this one in terms of which all other bodies must be thought about and understood” (Griffiths, 2005, p. 400).<sup>6</sup> Accordingly,

---

<sup>6</sup>Griffiths goes on to say that the social constitution of Christ’s body as the Church yields “the beginnings of a criterion for distinguishing between imaginary and real bodies” (p. 400). For Griffiths, families and the Church are the only real social bodies that exist; unlike, say, a nation which is a social body that exists only in virtue of imagining their worth and meaning. Families are real because they are grounded in blood/genetic inheritance and the Church is real because it is grounded in God’s election (p. 402). Griffiths does not elaborate this point. For some it might

Christ's body normatively informs and orders theological reflection on the moral significance of human embodiment, sexual, and familial relations.

Christ became a body in the Incarnation, manifesting God's self-giving love for the world, blessing by sharing the power and the limitations (save that of sin) of our human bodily condition, revealing the sort of God who promised to save us by subverting our expectations for how God would do so. Christ shared his body in ordinary and miraculous ways through his life, ministry, and healing. He affirmed bodily needs repeatedly (Mt 15:32, Mk 5:43), and at times met those needs in violation of the law (Mk 7:1–9, Lk 6:1–11), showing himself to be a new law. He rejected social distinctions grounded in bodily difference and bodily grounded purity codes, for example, speaking with the Samaritan woman at the well (Jn 4:1–42) or healing the daughter of the Syro-Phoenician woman (Mk 7:24–30). He gave his body in freedom to beating, crucifixion, and death, dying a human death in a way no other human can because of the perfect freedom with which he died. His bodily death changes the meaning of our bodily constitution, making a sign of enmity into one of love, wholly inclusive in its scope (see Weaver, 2005). Christ's corporeal body, given in his life and death, establishes a corporate body, in which we receive new life as God's adopted children and as siblings of one another.

We become God's adopted children when we are incorporated into Christ's body. By baptism we participate in Christ's bodily death and resurrection, appropriating God's gracious self-gift, which confers on us a new identity as it transforms the meaning of and possibilities for our embodiment. As new beings in Christ, the natural "givens" of our creaturely existence find their meaning and fulfillment in reference to God's kingdom.

This much is clear in Christian theological subversion of biological kinship, an aspect of Christian tradition routinely ignored in treatments of embryo adoption. In Matthew 12:46–50, for example, when Jesus is told that his mother and brothers await him, he looks at the crowd gathered around him and identifies his mother and brothers as those who do the will of the Father (see also Lk 8:19–21 and Mk 3:31–35). Various gospel passages reject the priority of biological over spiritual kinship, challenge romantic views of marriage and family, and commend celibacy as an alternative form of life. Other passages affirm the sort of care and fidelity that can characterize marriage and family life, of course, but without overwhelming the more ambivalent or critical perspectives. What are we to make of this? In the gospels

[T]he family as it exists is neither approved nor disapproved of; it is a fact of human existence, rooted deep in human nature as created and embodied, fundamental and inescapable. It is directly and powerfully tied to the creative design and will of God, as the original context for the giving and protection of life. But there is a counterpoint: according to the

---

imply that families formed by adoption are imaginary, an idea expressed or alluded to in several treatments of embryo adoption (e.g., Tonti-Filippini, 2006). Yet, Griffiths rightly asserts that "for Christians, the Church, because it is Christ's body, is the paradigm of community: All others are understood to be such in terms of this paradigm, and assessed as to their goodness in terms of their approximation to it" (p. 401). Hence, the reality of adoptive families needs to be assessed in relation to the Church, as do the shape, end, and practices of biologically related families.

logic of Christian faith, the life thus given is fallen and in need of redemption, and fallen with it are these primal attachments. Therefore, this matrix of human connections must be reclaimed and taken up into God's redemptive purposes. The gospels insist that this claiming of family relationships is key, and to be claimed is also to be constrained and challenged and redefined. Ultimately, it is to be decisively relativized in accord with the overwhelming priority of God's reign. (Wheeler, 2005, p. 348)

Marriage and parenthood are created, fallen, and redeemed social bonds. Many goods that make up human well-being may be actualized, distributed through, and protected in these bonds. The concrete forms and expressions they take vary historically and cross-culturally but always are answerable to God's redemptive purposes. These purposes are manifest in Christ's bodily death and resurrection, given gratuitously and inclusively for our good as creatures and children of God remade for life in knowledge and love with him and with one another. In short, this initial reflection on Christ's body and ours draws our attention to the practical and normative connection between individual bodily well-being and our common human destiny in God's kingdom. Familial relations should be actualized in ways ordered to the flourishing of spouses, parents, and children *and* to the flourishing of their communities. Before we can appreciate the significance of these reflections for our thinking about embryo adoption, we need to consider more directly what adoption is and accomplishes.

#### 4 A Theology of Adoption

One challenge for moral theological reflection on embryo adoption is that while Catholic tradition affirms the legitimacy and goodness of adoption in response to unfortunate disruptions to parent-child relations, there is a dearth of substantive theologies of adoption. Whatever explicit position the Church comes to take on the morality of embryo adoption, an adequate Catholic response to the problem requires far better theological and pastoral care for couples struggling with infertility, and more explicit and sensitive theological and pastoral attention to adoption.<sup>7</sup> As Lisa Cahill notes, "Catholic social teaching provides a framework for appreciating the moral importance and interdependence of adoptive families, birth families, and the social conditions that create both a demand for adoption and source of adoptable children" (Cahill, 2005, p. 149). Cahill argues that Catholic social teaching emphasizes the following in moral reflection on and more ethical practices in adoption: "Christian altruism and service, especially the preferential option for the poor; the importance of the natural law and of the common good as constituting a framework of understanding the rights and responsibilities of individuals, families, institutions,

---

<sup>7</sup> Post-natal adoption, of course, need not always be a response to infertility. Perhaps more biologically related and intact families would consider growing through adoption if the Church offered more fulsome theological attention to our universal adopted status, more pastoral support for birth parents, and more education about adoption. See Ryan, 2001.

and communities; and the principle of subsidiarity, which highlights the importance of local efforts and local authority in addressing social problems” (2005, p. 160). Yet, these principles, values, and frameworks stop short of comprising a theology of adoption.

We are all adoptees, children God makes his own by incorporating us into the body of Christ: “Just as He chose us in Him before the foundation of the world, that we would be holy and blameless before Him in love, He predestined us to adoption as sons through Jesus Christ to Himself, according to the kind intention of His will, to the praise and glory of His grace, which He freely bestowed on us in the Beloved” (Eph 1:4–6). God’s adoption of us reveals who God wills to be in relation to us and who we are in relation to God. God shows us to be creatures in need of redemption as he shows himself to be one who is for us, gratuitously and unreservedly, a creator who wills also to be “Abba, Father.” Because our redemption occurs as our adoption, God makes us fallen creatures his beloved children, intending us to be full inheritors of his kingdom. God adopts us by graciously enabling our incorporation into Christ, making us one with Christ so that we live in him and he in us. We simultaneously partake in Christ’s corporeal body as we partake in his corporate body, wherein we are called to lives of mutual love and service. Christ’s corporeal body, given freely for all, dictates the inclusive scope of his corporate body. Indeed, our adoption by God is “finalized,” so to speak, when he sends his Spirit to dwell in Christ’s corporate body.

God’s adoption of us, then, is God’s decision to be Father to us, a decision he reveals and enacts in his only begotten son, Jesus Christ. Our adoption affirms that we *are* God’s children because we are graciously *made* to be such. Grace perfects our creaturely nature, making us new beings. By conferring upon us a new identity as sons and daughters God commissions us to live as his children; this vocation normatively impacts our desires, loyalties, bonds, customs, and institutions.<sup>8</sup> It also radically redefines the meaning of our bodily existence. The spiritual kinship we enjoy in Christ and our common destiny as heirs of the kingdom is more real and thus more normative than our biological kinship (Mt 12:46–50). Spirit, not seed, makes us God’s family. Without denigrating our bodily needs and inclinations and relationships, our adoption by God refers these to God’s promise and call.

Just as God’s adoption of us occurs by virtue of his free decision in Christ to be Father to us, so in human adoption adoptive families make children their own by making *themselves* parents, siblings, and grandparents to these children. They do so in an unconditional and intentionally permanent moral commitment. Like marriage vows, adoption performatively enacts a covenant relation which is immediately real even as it remains a relationship the parties live into over the course of a common life. In making a moral commitment to *be* mother, father, and family to a child, those who adopt take up a new relationship to the child they welcome, a relationship which confers a new identity on the child by first conferring a new identity on

---

<sup>8</sup> God calls us to live as his children in and through the particular vocations specific to us as individuals.

the parents and family who welcome them. Adoption, morally understood and practiced, neither cancels nor conceals the fact of biological difference between children who were adopted and the family members who welcome them. Nor does it deny that biological kinship has some significance and value as it attests to particular embodied histories and bonds. Biological offspring literally embody the coupling of their genetic parents. But these created bonds are fallen ones as well, as are our capacities to reason morally about them; both these bonds and our capacities morally to understand and realize them require a redemption that itself is uniquely embodied in adoption. Adoptive bonds between parents and children attest to the subversive power of God's gratuitous and inclusive love and to our common destiny to know and love him as one family.

These reflections do not comprise an argument on behalf of the moral permissibility of embryo adoption. Rather, they show that inquiry into embryo adoption would do well to engage Christian tradition more fully and theologically. They also, I hope, suggest the promise of reframing moral inquiry into embryo adoption. We might then fruitfully inquire whether becoming the sort of people who would welcome the embryos of others as our own children is compatible with the good news that we are all adopted children of God, and what sort of social conditions and practices would enable those among us so called to be this sort of people.

## 5 Embryo Adoption and the Common Good

The common good, to borrow Pope John XXIII's formulation, is "the sum total of conditions of social living whereby persons are enabled more fully and readily to achieve their own perfection" (John XXIII, 1961, no. 65). The common good refers to the complex conditions of our common well-being as the embodied, spiritual, and social creatures we are. The common good designates both an ideal state of affairs that may and should orient us morally, and a practical moral principle that informs our deliberation. As an ideal state of affairs, the common good would entail an end to embryo adoption because there would be no excess embryos. The infertility and other cultural conditions that contribute to their creation would meet with different responses or cease altogether. As an ideal the common good cannot fully be realized this side of the cross; indeed, the common good most properly understood is God, known, enjoyed, and adored in the fullness of our capacities forever and with one another.

Appeals to the common good require us to consider the import of our choices, relations, and institutions for society as a whole. The common good thus functions as an ethical "check" on moral decision-making. In this respect it appears to yield little help to embryo adoption debates insofar as the check reverts back to the arguments already in play – inasmuch as embryo adoption enacts respect for embryonic life and partakes in the good of adoption it contributes to the common good, yet inasmuch as embryo adoption violates marriage thus and so does it detract from the common good.

On further reflection, however, the common good promises to enlarge moral consideration of embryo adoption. To begin, it situates marriage in a social context without displacing reflection on human psychosomatic constitution. By referring marriage to the common good we appreciate better that marriage is ordered not only to the flourishing of spouses and their children but to the good of all. Indeed, the common good is an indispensable part of a complete Catholic sexual ethic. It challenges our modern privatization of reproductive decision-making as well as a persistent biologism (Bartholet, 1993) that suggests that only a genetically related child could be “one’s own.” Importantly, the common good cautions us against construing marital exclusivity as insularity. It indexes human generative capacities to moral values such as solidarity with those in need and stewardship over our resources and capacities.

David Hollenbach points out that a key aspect of the common good is “the good of being a community at all – that good realized in the mutual relations in and through which human beings achieve their well-being.” The common good encompasses the diverse and complex goods that make up human flourishing, including the intrinsic value of human relations. Most properly, the common good is God, who is our good and who wills the communion of creation in and with him. Following Jacques Maritain, Hollenbach argues that “the fulfillment of human persons occurs in relations of love, communion, and solidarity with both God and other human beings. . . . To be a person is to be-in-relation-to-other-persons” imagining the Trinitarian nature of God. Certainly marriage and parenthood – both biological and adoptive – are paradigmatic expressions of our likeness to God in our fundamental relationality, and certainly they are occasions for experiencing God’s love and sharing in it through love of neighbors. Embryo adoption has the real potential to forge intrinsically valuable forms of community and witness to God’s life-giving love through solidarity with a most vulnerable class of human beings.

But how do these ends square with the means of heterologous embryo transfer? How does EA comport with our basic relationality as the embodied creatures we are, and accordingly with the one flesh union of marriage? I suspect that the common good, as an indispensable part of a complete sexual ethics, can transform our understanding of the relation of generative capacities to intimate marital union. The common good alerts us to the fact that in the mutual self-gift spouses make, their generative capacities are a gift held in common, a gift to be exercised in stewardship and solidarity. In embryo adoption the couple makes a gift of their generative capacities to the embryos they would welcome, nurture, love, and parent. By virtue of their shared intention to adopt, a wife is not pregnant merely with another couple’s genetic offspring, or merely with her child – she is pregnant with her and her husband’s child.

## 6 Conclusion

As I said above, I presently consider embryo adoption morally permissible. I do not pretend that this chapter offers a full-blown defense of that position. Instead, my primary concern has been to show that going Catholic arguments regarding embryo



adoption are vexed by a number of problems and to call (like Lauritzen, this volume; Gregory, this volume) for more expansive and more theological moral assessment of the practice. Arguments for and against embryo adoption need to be more engaged with heretofore neglected resources in scripture and tradition, with scholarship in relevant disciplines, and with wider religious traditions and secular culture. Without this sort of wide engagement and given the likelihood that embryo adoptions will continue to increase in number, Catholic moral argument concerning embryo adoption will reside ineffectually in a sort of ethical cul-de-sac. In and through such engagement our minds and hearts might quicken in response to the God who makes us his own by joining us bodily to one another and to himself.

## References

- Bartholet, E. (1993). *Family Bonds: Adoption, Infertility, and the New World of Child Production*. Boston, MA: Beacon.
- Berkman, J.R. (2002). 'The morality of adopting frozen embryos in light of Donum Vitae,' *Studia Moralia*, 40, 115–141.
- Berkman, J.R. (2003a). 'Gestating the embryos of others,' *National Catholic Bioethics Quarterly*, 3, 309–329.
- Berkman, J.R. (2003b). 'Reply to Tonti-Filippini on "Gestating the embryos of others",' *National Catholic Bioethics Quarterly*, 4, 12–13.
- Berkman, J.R. (2006). 'Virtuous parenting and orphaned embryos,' in T. Berg & E. Furton (Eds.), *Human Embryo Adoption: Biotechnology, Marriage, and the Right to Life* (pp. 13–36). Philadelphia, PA; Thornwood, NY: The National Catholic Bioethics Center and the Westchester Institute for Ethics and the Human Person.
- Brugger, E.C. (2006). 'A defense by analogy of heterologous embryo transfer,' in T. Berg & E. Furton (Eds.), *Human Embryo Adoption: Biotechnology, Marriage, and the Right to Life*. Washington, DC: The Westchester Institute.
- Cahill, L.S. (1996). *Sex, Gender, and Christian Ethics*. Cambridge: Cambridge University Press.
- Cahill, L.S. (2005). 'Adoption: A Roman Catholic perspective,' in Timothy P. Jackson (Ed.), *The Morality of Adoption: Social-Psychological, Theological, and Legal Perspectives*. Grand Rapids, MI and Cambridge: Eerdmans.
- Congregation for the Doctrine of the Faith (1987). *Donum Vitae (Instruction on Respect for Human Life in Its Origin and on the Dignity of Procreation: Replies to Certain Questions of the Day)* [Online]. Available: [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_19870222\\_respect-for-human-life\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19870222_respect-for-human-life_en.html).
- Gaudium et Spes: The Pastoral Constitution on the Church in the Modern World* (1965), in A. Flannery (Ed.) (1992). *Vatican Council II, the Conciliar and Post Conciliar Documents*. North Port, NY: Costello.
- Geach, M. (1999). 'Are there any circumstances in which it would be morally admirable for a woman to seek to have an orphan embryo implanted in her womb?' in L. Gormally (Ed.), *Issues for a Catholic Bioethic* (pp. 341–346). London: The Linacre Centre.
- Geach, M. (2006). 'The female act of allowing an intromission of an impregnating kind,' in T. Berg & E. Furton (Eds.), *Human Embryo Adoption: Biotechnology, Marriage, and the Right to Life* (pp. 251–271). Philadelphia, PA; Thornwood, NY: The National Catholic Bioethics Center and the Westchester Institute for Ethics and the Human Person.
- Griffiths, P.J. (2005). 'Christians and the Church,' in G. Meilaender & W. Werpehowski (Eds.), *The Oxford Handbook of Theological Ethics* (pp. 398–412). Oxford: Oxford University Press.

- Grisez, G. (1997). 'Should a woman try to bear her dead sister's embryo?' in *The Way of the Lord Jesus, Vol. 3, Difficult Moral Questions* (pp. 239–244). Quincy, IL: Franciscan Press.
- John, XXIII (1961). *Mater et Magistra (On Christianity and Social Progress)* [Online]. Available: [http://www.vatican.va/holy\\_father/john\\_xxiii/encyclicals/documents/hf\\_j-xxiii\\_enc\\_15051961\\_mater\\_en.html](http://www.vatican.va/holy_father/john_xxiii/encyclicals/documents/hf_j-xxiii_enc_15051961_mater_en.html).
- John Paul, II (1981). *Familiaris Consortio (The Christian Family in the Modern World)*. [Online]. Available: [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/apost\\_exhortations/documents/hf\\_jp-ii\\_exh\\_19811122\\_familiaris-consortio\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/apost_exhortations/documents/hf_jp-ii_exh_19811122_familiaris-consortio_en.html).
- Kerr, F. (2007). *Twentieth Century Catholic Theologians: From Neoscholasticism to Nuptial Mysticism*. Malden, MA: Blackwell.
- Long, S.A. (2006). 'An argument for the embryonic intactness of marriage,' *The Thomist*, 70, 267–88.
- May, W.E. (2006). 'The object of the acting woman in embryo rescue,' in T.V. Berg & E.J. Furton (Eds.), *Human Embryo Adoption: Biotechnology, Marriage, and the Right to Life* (pp. 135–163). Philadelphia, P A, Thornwood, NY: The National Catholic Bioethics Center and The Westchester Institute for Ethics and the Human Person.
- Oleson, C. (2006). 'The nuptial omb: On the moral significance of being "with child",' in T.V. Berg & E.J. Furton (Eds.), *Human Embryo Adoption: Biotechnology, Marriage, and the Right to Life* (pp. 165–195). Philadelphia, P A, Thornwood, NY: The National Catholic Bioethics Center and The Westchester Institute for Ethics and the Human Person.
- Ryan, M.A. (2001). *Ethics and Economics of Assisted Reproduction: The Cost of Longing*. Washington, DC: Georgetown University Press.
- Tonti-Filippini, N. (2006). 'The embryo rescue debate: Impregnating women, ectogenesis, and restoration from suspended animation,' in T. Berg & E. Furton (Eds.), *Human Embryo Adoption: Biotechnology, Marriage, and the Right to Life* (pp. 69–114). Philadelphia, P A; Thornwood, NY: The National Catholic Bioethics Center and The Westchester Institute for Ethics and the Human Person.
- Weaver, D.F. (2005). 'Death,' in G. Meilaender & W. Werpehowski (Eds.), *The Oxford Handbook of Theological Ethics* (pp. 254–270). Oxford: Oxford University Press.
- Weaver, D.F. (forthcoming). 'Embryo adoption: Expanding the terms of the debate,' in L. Hogan (Ed.), *Catholic Theological Ethics in the World Church*. New York: Orbis.
- Wheeler, S. (2005). 'Christians and family,' in G. Meilaender & W. Werpehowski (Eds.), *The Oxford Handbook of Theological Ethics* (pp. 343–359). Oxford: Oxford University Press.

# From Rescuing Frozen Embryos to Respecting the Limits of Nature: Reframing the Embryo Adoption Debate

Paul Lauritzen

## 1 Introduction

In 1985, Gary Trudeau and the Universal Press Syndicate agreed not to run six installments of the comic strip “Doodlesbury” which parodied “The Silent Scream,” an anti-abortion film that showed ultrasound images of an abortion of a 12-week-old fetus taking place. The ultrasound images of the abortion depicted in “The Silent Scream” were accompanied by commentary from a physician–narrator, Bernard Nathanson, who had once performed abortions but had become a staunch opponent of abortion. In fact, the film takes its name from a series of images which Nathanson describes as follows:

We can see the tip [of the abortion instrument] move back and forth as the abortionist seeks the child’s body. Once again we can see the child’s mouth wide open in a silent scream in this particular freeze frame. This is the silent scream of a child threatened imminently with extinction.<sup>1</sup>

In Doodlesbury’s parody, “Silent Scream II, the Prequel,” Trudeau draws the Nathanson character pointing to a tiny dot on the panel and offering the following commentary:

Through the magic of fiber optics, we’ve been able to take a computer-enhanced photo of the child in repose. As yet, he is unaware of the danger he faces .... Let’s call him “Timmy” .... As the moment approaches, Timmy seems almost oblivious to the charged debate that attends his fate. Minutes later, the die is cast. The mother has made the unconscionable decision that sets in motion the doctor’s grisly procedure. The final seconds. By studying his mouth through stop-action imaging, we can determine Timmy’s final words, which are almost certainly, ‘Repeal Roe v. Wade.’<sup>2</sup>

Trudeau was probably wise to pull the strip given the firestorm it would likely have generated if it had circulated widely, but it was certainly an inspired parody.

---

<sup>1</sup> The film and a transcript of the narration of the film can be found at: <http://www.silentscream.org/>.

<sup>2</sup> Although this set of strips did not run in Trudeau’s syndicate, it was published in the June 10, 1985 issue of *The New Republic*, 8–9.

It powerfully captured the pretentious tone of Nathanson's pseudo-scientific narration and in focusing on a 12-minute-old pregnancy, Trudeau highlighted tensions in a pro-life position that seems logically committed to equating an embryo from conception with a child we might actually call Timmy.

Although Trudeau was accused of an unfair *reductio ad absurdum* of the pro-life position, I have been struck by how apt Trudeau's parody seems to be to recent debates about embryo adoption. For example, consider Nicholas Tonti-Filippini's comments about frozen IVF embryos. "Standing in one of the Melbourne clinics before the freezer unit where frozen embryos were stored," he writes,

[T]hese questions [i.e., May they be rescued? How may they be rescued?] struck me with some force. There was a sense in which they cried out: The Lord said to Cain: 'What have you done? The voice of your brother's blood is crying to me from the ground' (Gn 4:10). The voice of the blood shed by men continues to cry out, from generation to generation, in ever new and different ways. (Tonti-Filippini, 2003, p. 112)

One can almost hear Trudeau's Nathanson: "Through the miracle of microacoustic enhancement, we can hear this 8-day-old embryo from across the frozen tundra. Let's call him Abel."

I begin by noting the similarity between Trudeau's parody of "The Silent Scream" and Tonti-Filippini's reflections on the disposition of frozen embryos because there is an odd quality to much of the Catholic debate on embryo adoption to which Tonti-Filippini's essay draws our attention. Indeed, I am concerned that Catholic debate about embryo adoption has been idiosyncratic and (religiously) intramural in a way that obscures important insights that the tradition could offer to the debate, if it were framed differently. Specifically, unlike Catholic reflection on reproductive technology generally, which includes appeals both to exclusively faith-based reasoning primarily directed to the faith community and to natural law arguments which should be accessible to any person of good will, the debate among moral theologians on embryo adoption is very narrowly framed and unlikely to engage ethicists outside the Catholic community (see also Weaver, this volume).

Consider, for example, the way in which *Donum Vitae* situated the issues raised by reproductive technology as illustrative of problems confronting modern medicine and science generally, namely, the danger of treating the entire natural world, including human beings, as artifacts that can be manipulated at will. It is precisely this concern that the Congregation for the Doctrine of the Faith (CDF) had in mind when it wrote that "the human body cannot be considered as a mere complex of tissues, organs and functions ... rather it [the body] is a constitutive part of the person who manifests and expresses himself through it" (CDF, 1987, Intro., no. 3). Indeed, the Congregation quotes Pope John Paul II at this point. "Each human person, in his absolutely unique singularity, is constituted," the Pope wrote, "not only by his spirit, but by his body as well. Thus, in the body and through the body, one touches the person himself in his concrete reality" (CDF, 1987, Intro., no. 3). The problem with *in vitro* fertilization (IVF) is not that it is unnatural; nor is it merely that embryos will be destroyed in the process. The problem with IVF is that it is a scientific intervention in the process of procreation that does not just assist but instead dominates human reproduction. It thereby substitutes norms of technical efficiency for evaluating

human actions when the criteria of evaluation should be respect for human life in its fully embodied form.

To be sure, not everyone finds this line of argument convincing, but something like this reasoning is at the heart of *Donum Vitae* and is widely accessible to both believers and non-believers. Is there a comparable attempt to frame the issue of embryo adoption in terms that are not exclusively Catholic? Unfortunately, I believe that the answer is no, for the Catholic debate on this issue has been narrowly focused and largely addressed to co-religionists.<sup>3</sup>

To illustrate my concerns, I want to focus on two characteristics of the Catholic debate on embryo adoption as it has unfolded up to this point. First, the issue of how to think about the disposition of frozen embryos has been framed mostly in terms of the question of whether it is morally defensible to rescue frozen embryos. Second, the debate has often pivoted around a particular act-oriented interpretation of Catholic natural law teaching on the relationship of sex, marriage, and procreation. Unfortunately, both the language of rescue and a physicalist, act-oriented account of human sexuality remain deeply puzzling to many, and neither is likely to lead to a broad consensus on the treatment of frozen embryos. As we will see, both the preoccupation with “rescue” language and the highly idiosyncratic terms of the argument about marital fidelity reduce the impact that Catholic reflection on frozen embryos might make to a broader discussion of this issue in particular and of the relation of biotechnology and human nature more generally.

In one sense, of course, the terms of the embryo adoption debate for Catholic moralists flow from well-known teachings about prenatal life and the meaning of sex, marriage, and procreation that have been articulated primarily in relation to other issues. Indeed, one reason that the issue of embryo adoption has engaged (and divided) moral theologians is precisely that the question of what to do with frozen embryos appears to pit these two areas of teaching against one another. On the one hand, the tradition teaches that the embryo is a person from conception and to discard the embryo is to end a human life. On the other hand, for a woman who is not the genetic parent to gestate a frozen embryo appears to separate genetic and social parenthood and to undermine the magisterial teaching that “the fidelity of the spouses in the unity of marriage involves reciprocal respect of their right to become

---

<sup>3</sup>One of the striking characteristics of the debate about embryo adoption among Catholic moral theologians is precisely how narrowly the issue has been framed. For example, many of the essays that address the topic cite only magisterial documents or a narrow range of Catholic sources. In her essay in this volume, Catherine Althaus notes that “any number of political, economic, legal, or other socio-economic issues and observations could be made ... in order to assess the morality of the act” (p. 44). Nevertheless, Althaus asserts that these matters are “peripheral to the central question of whether the act is, in itself, a moral one” (p. 44). My own view is that the Catholic debate about embryo adoption would be greatly enriched by engaging the sources to which Althaus alludes. I also believe that if moral theologians engaged non-Catholic sources more directly in this debate, some of the problems with reproductive technology more generally might come more clearly into focus. See Gregory, this volume.

a father and a mother only through each other” (CDF, 1987, II.A., no. 1). Thus, it is not surprising that the debate about embryo adoption has been framed as it has been or that Catholic moral theologians have been divided about it. Whether this is the most productive way to frame the debate is, however, another question.

## 2 The Rescue Paradigm

I turn first to the way in which the Catholic debate about embryo adoption has so consistently framed the issue in terms of the choice: to rescue or not to rescue? Tonti-Filippini’s essay, “The Embryo Rescue Debate” is fairly typical in this regard. Indeed, the language of “rescue” – sometimes in scare quotes and sometimes not – is the defining rhetorical unit in terms of which Catholic writers have discussed embryo adoption.<sup>4</sup> As I have already suggested, in one way, this makes sense. Given Catholic teaching that the embryo is, or at least must be treated as if it is, a person from the moment of conception, it follows that discussing the disposition of frozen embryos is to be concerned about the fate of persons. The language of rescue may thus come naturally to mind.

Yet, it is important to see that the language of rescue has affinity with other concepts here, and Tonti-Filippini’s essay brings this out as well. Not only does he analogize discarding frozen embryos to the murder of Abel, but he claims that “more than three in every thousand Australians” are being held in a kind of Siberian gulag.<sup>5</sup> In other words, the commitment to full personhood of the embryo brings in its wake an interlocking set of conceptualizations, namely, persons–captives–rescuers. And, in fact, much of the debate about embryo research, at least in Catholic circles, is couched in similar terms. What should we make of this kind of statement? How should we respond, for example, to Jerome Lejeune’s (1992, p. 100) comparison of cryopreservation tanks to concentration camps?<sup>6</sup>

---

<sup>4</sup> See M.J. Iozzio (2002). ‘It is time to support embryo adoption,’ *The National Catholic Bioethics Quarterly*, 2, 585–593; B.P. Brown & J.T. Eberl (this volume); E.C. Brugger (2005). ‘In defense of transferring heterologous embryos,’ *The National Catholic Bioethics Quarterly*, 5, 95–112; J.L. Davidson (2001). ‘A successful embryo adoption,’ *The National Catholic Bioethics Quarterly*, 1, 229–233.

<sup>5</sup> Tonti-Filippini also makes the very odd claim that conception takes place only when an embryo is implanted in the uterus. According to Tonti-Filippini, “It is simply not true to say that a woman has conceived a child when she is not pregnant.” In the case of IVF, this means that a child is not conceived until the embryo is transferred to the uterus. As Tonti-Filippini puts it, before transfer, “it is the laboratory that is with child.” John Berkman has an excellent discussion of Tonti-Filippini’s unusual claims about parenthood. See J.R. Berkman (2003). ‘Gestating the embryos of others: Surrogacy? Adoption? Rescue?’ *The National Catholic Bioethics Quarterly*, 3, 318–320.

<sup>6</sup> Lejeune insists that the title of his book about the *Davis v. Davis* case should not be translated as concentration camp, but he explicitly endorses the comparison. “It is true that in both cases,” he says, “the concentration wall imprisons innocents.” (Lejeune, 1992, p. 100).

The first thing to note is that, for many, Catholic and non-Catholic alike, talking about frozen embryos as prisoners who should be rescued has a kind of Alice-in-Wonderland quality to it. Given that Catholic moral theology is typically framed in ways intended to be accessible to all people of good will, it is worth exploring the idea of rescuing embryos a bit more fully. Although there is a logical consistency in describing frozen embryos as prisoners and gestational mothers as rescuers, at least if your starting point is the full personhood of the embryo, it must be admitted that this language is decidedly peculiar. For example, John Berkman has pointed out that “rescue” situations typically involve an emergency in which a person is in imminent danger and where the rescuer undertakes significant risk on behalf of someone he or she generally does not know. As Berkman points out, gestating frozen embryos does not appear to fit this paradigm, and how we describe the choice of the woman who decides to gestate a frozen embryo is morally significant (Berkman, 2003, pp. 323–326). To describe the action as a rescue may, under some circumstances, lead us to see it as morally obligatory.

I agree with Berkman’s analysis here, but I believe that there is an even more basic problem with framing the gestation of frozen embryos as the rescue of imprisoned persons. It is that the whole conceptual and linguistic universe that this framework entails is radically implausible, at least if this language is used literally, as it seems to be in much of the literature. Do we really want to say that an eight-cell organism cryopreserved in the lab is a “tiny person” (Brugger, 2005, p. 96)? Is it meaningful to talk about the “plight” of frozen embryos (Iozzio, 2002, p. 591) or about the “horrible situation” (Geach, 1999, p. 341) frozen embryos endure?

As a shorthand way of conveying a sense of awe about procreation and the value of human life generally, using the language of personhood to describe the embryo makes sense. However, that is not how the language is being used here. Instead, there is a tendency in the embryo adoption debate literature to use the language of personhood non-metaphorically, as if a frozen embryo is literally a very tiny person being held in captivity against his will. How else can we understand the claim of JoAnn Davidson that the Snowflakes embryo adoption program of the Nightlight Christian agency “offers hope” to thousands of frozen embryos (Davidson, 2001, p. 229)? What else can Robert Onder mean when he says that frozen embryos “cry out at the injustice of their treatment” (Onder, 2005, p. 76)? In what other way can we take Jerome Lejeune’s description of the embryos in the Davis case as the “frozen little ones” (Lejeune, 1992, p. 4)?

Even apart from either the implausibility of talking about a cluster of undifferentiated cells in the lab as if it could experience hope or cry out or regret its confinement, or from the fact that the situation of frozen embryos does not fit the paradigmatic situations in which the language of rescue is typically used, talk of rescue is often inappropriate in another way. It construes the situation of gestating frozen embryos as if this will be a selfless act undertaken outside of the context of infertility treatment, when in fact embryo adoption will typically be undertaken by infertile couples who have exhausted other means of having a child together. Supporters of embryo adoption are clearly aware that this means of having a child may become simply another item in the menu of reproductive services offered by infertility clinics, but they act as if this fact does not undercut the credibility of rescue language in this context.

Consider, for example, William E. May's comments about the danger of embryo adoption giving scandal:

To avoid scandal, the woman should take care to let it be known that she regards *in vitro* fertilization and surrogate mothering as intrinsically evil, that babies produced artificially are human persons of incalculable value and in need of protection, and that her only interest is to protect an abandoned unborn baby's life. (May, 2005, p. 53)

Later in the same essay, May (2005, p. 56) insists that the woman gestating a thawed frozen embryo "is serving only the unborn child." While such purity of motive is theoretically possible, the evidence suggests that embryo adoption will serve largely as an adjunct of existing infertility services offered by IVF centers.

In raising this concern, I am not suggesting that a couple who adopts a frozen embryo is necessarily complicit with evil or cooperates with wrongdoing or gives scandal. Indeed, I find the analysis of Brown and Eberl in this volume largely compelling. Yet, even if we accept their conclusion that a woman who works with an IVF clinic to have frozen embryos transferred to her uterus need not cooperate with IVF nor cause scandal, it does not follow that most who pursue embryo adoption will come to it as, say, John and Suzanne Stanmeyer describe in this volume. On the contrary, most couples are more likely to come to consider embryo adoption as one in a series of options offered to them from within the world of reproductive medicine. When this is the case, using the language of rescue will be deeply misleading.

It is also worth noting that clinics that offer embryo adoption will typically be fully committed to offering a full range of reproductive services, including IVF. As Jeffrey Keenan indicates, the National Embryo Donation Center (NEDC) seeks to keep the costs of embryo donation lower than other types of reproductive technology offered in their affiliate clinics in the hope of lowering barriers to embryo adoption (Keenan, this volume).

Indeed, Keenan's essay in this volume dramatically highlights the difficulty of using the language of rescue in a context in which there is both a commitment to offer infertility services that include IVF and to rejecting the loss of embryonic life as morally repugnant. Keenan (this volume) says, for example, that he is committed to reducing the number of surplus embryos "by voluntarily limiting the number of eggs inseminated and thus fertilized during an IVF procedure." For that reason, in his own practice he recommends inseminating "only 8–9 oocytes during an IVF procedure" (Keenan, this volume, p. 229). I do not doubt the sincerity of Keenan's commitment to reducing the number of frozen embryos discarded during IVF procedures, but to say that gestating a thawed IVF embryo is to rescue it, is, in this context, a bit like saying that I need to ask most of the people in the building I am about to torch to leave before I strike the match. If I then run in to a burning building to save the person remaining inside, I can hardly be said to be rescuing him.<sup>7</sup>

---

<sup>7</sup>I realize that May would probably reject Keenan's work with the NEDC as a morally indefensible cooperation with evil. My point is that most embryo donation will take place in something like the context that Keenan describes. Thus, as a general matter it will be misleading to talk about rescuing frozen embryos.



### 3 Marital Fidelity and Embryo Adoption

If “rescue” has been the fundamental trope for debating embryo adoption among Catholic theologians, the question of whether rescue is morally acceptable has often hinged on the issue of whether gestating a thawed embryo violates Church teaching on the relationship of sex, marriage, and procreation. Once again, Tonti-Filippini’s essay is instructive. As he puts this point, “the rights of the child are not the only intrinsic issue [with embryo adoption]. The question of the unity of marriage, the dignity of the spouses, and their fidelity to each other are also at issue” (Tonti-Filippini, 2003, p. 114). A little further on in this essay, Tonti-Filippini writes:

The question of a woman becoming a mother, other than through her spouse, does raise a range of questions about motherhood and fatherhood and the significance of a medical procedure that makes a woman pregnant and in that sense makes her a mother. More than that, this becoming pregnant through HET [heterologous embryo transfer] is from outside the context of her marriage, and is an event from which her husband is, in effect, excluded. (2003, p. 115)

The reason that we need to wrestle with the issue of whether adopting a frozen embryo is to achieve a pregnancy outside the context of marriage is precisely what Tonti-Filippini says it is, namely, that Church teaching is that there are two values at stake here: “the life of the human being called into existence and the special nature of the transmission of human life in marriage” (CDF, 1987, Intro., no. 4).

In discussing the “special nature” of human procreation, *Donum Vitae* invokes the traditional natural law understanding according to which sexual activity, love, procreation, and marriage belong together. On this view, procreation is properly undertaken in the context of a loving monogamous marriage through an act of sexual intercourse between spouses. This is one reason the tradition teaches that using donor sperm or donor egg to conceive a child is morally problematic. As *Donum Vitae* puts this point:

Respect for the unity of marriage and for conjugal fidelity demands that the child be conceived in marriage; the bond existing between husband and wife accords the spouses, in an objective and inalienable manner, the exclusive right to become father and mother solely through each other. Recourse to the gametes of a third person, in order to have sperm or ovum available, constitutes a violation of the reciprocal commitment of the spouses and a grave lack in regard to that essential property of marriage which is its unity. (CDF, 1987, II.A, no. 2)

Now although I believe that what stands behind this teaching on human sexuality is a profound recognition that a person is a unified totality of body and spirit such that it is a mistake to treat the body as “a mere complex of tissues, organs and functions,” as reproductive medicine so frequently does, this insight gets lost in the intricacies of the embryo adoption debates. Instead of focusing on the embodied character of human procreation as an expression of personal love expressed in the intimate language of the body, attention is directed elsewhere. Let me give two examples.

Although Tonti-Filippini worries about the gestating woman’s “psychosomatic unity” and about how even the term “prenatal adoption” is too dualistic – both concerns that appear to recognize the importance of the unified totality of body and spirit – in

the end he rejects embryo transfer. He does so because it dislocates “the generative continuum from fertilization and embryo formation to implantation to embryonic and then fetal development” (Tonti-Filippini, 2003, p. 120). Instead of exploring how a married couple might come together to the decision to gestate a frozen embryo and how that decision might (negatively) impact the embodied emotional bond between spouses, Tonti-Filippini offers an extended discussion of the meaning of “conception.” Strangely, he argues that the frozen embryo has not merely been abandoned by his parents; on Tonti-Filippini’s view, the frozen embryo has no parents. In Tonti-Filippini’s (2003, p. 123) words, “the fact of fertilization occurring elsewhere and by someone else means that the motherhood relationship has not been established at the time of fertilization.” According to Tonti-Filippini, because to conceive is to be with child or to become pregnant, in one sense the child has not been conceived until it is transferred to the gestational mother’s uterus. For that reason, the child is not “conceived in marriage” as *Donum Vitae* insists must be the case.

A second example of the tortured reasoning attending debates about whether embryo adoption violates marital fidelity is found in Catherine Althaus’ essay, “Can one ‘Rescue’ a human embryo?” Like Tonti-Filippini, Althaus concludes that rescuing frozen embryos is morally impermissible. Also like Tonti-Filippini, Althaus begins with some promising comments about the unity of body and spirit. She says, for example, that she will focus on the nuptial dimension of the body and highlight how a woman’s personhood, “embodied in and through her sexuality,” is directed “toward the inseparable provision of life and love” (Althaus, 2005, p. 114). In fact, however, her argument hinges on redefining the meaning of the conjugal act in such a way that gestating a frozen embryo is a form of marital infidelity. Her comments about the conjugal act strike me as about as odd as those of Tonti-Filippini’s on parentless children.

She writes:

The argument of this paper also depends upon a particularly inclusive manner of considering the ‘conjugal act.’ For the purposes of analyzing the morality of rescuing a frozen embryo via embryo transfer, I would like to propose a new way of considering the phrase ‘conjugal act.’ As we know, the conjugal act is not merely a genital act, but an act of love between a husband and wife, with inseparable unitive and procreative meaning. I propose that the term ‘conjugal act’ should be understood as beginning with the act of intercourse, and completing with the point of the birth of the child (which would be when the life of the child can be ‘independently sustained’ outside the womb of the woman). When the ‘conjugal act’ is understood in this richer and extended way, then it can be shown that an attempt to ‘rescue’ a frozen embryo involves a woman’s seeking pregnancy *outside* the conjugal act. (Althaus, 2005, p.114)

Althaus continues:

Not only does such a woman seek pregnancy without her husband and violate the marital covenant, she seeks to separate genetic motherhood from gestational motherhood and deny the embryo the dignity appropriate to its development and human existence. This transgression of the nuptial meaning of a woman’s body violates the integrity and integrality of her very womanhood and constitutes an offense against chastity. (Althaus, 2005, p. 115)

I do not think we need to say that gestating a frozen embryo is either to conceive outside the marital covenant or that it is to be unfaithful to one's spouse to see that there may be significant emotional and psychological issues involved with choosing to form a family through embryo adoption. Given Catholic teaching about the unified totality of body and spirit, that is, the human person, we have reason to think long and hard about gestating frozen embryos without having to redefine infidelity, conjugal relations, or the meaning of parenthood. Althaus is surely right to worry about the emotional and spiritual well-being both of the women who gestate frozen embryos and the children to whom they will give birth. In most cases, however, these women will have made the decision to gestate frozen embryos with their spouses and the decision will reflect a mutual commitment to their marriage, as well as concern to give a frozen embryo a chance of a meaningful life. To say about this situation that the woman is unfaithful and that she denies the embryo its dignity is simply not plausible without doing violence to the ways in which we normally talk about fidelity, chastity, dignity, and love.

#### 4 Reconceiving the Issues

Writing in the March 24, 2006 issue of *Commonweal* magazine, Cathy Kaveny noted that the Center for Bioethics and Culture, a conservative Christian organization devoted to promoting pro-life views in bioethics, had just awarded its third annual "Paul Ramsey Award" for excellence in bioethics (Kaveny, 2006, p. 6). Kaveny puzzled over the irony of the fact that the chair of the nominating committee for the award, C. Ben Mitchell, claims that denying that early embryos are fully persons is like denying the humanity of Jews and slaves. Kaveny found this ironic precisely because the person for whom the award is named, Paul Ramsey, in fact questioned whether early embryos could be said to be fully persons. As Kaveny (2006, p. 6) points out, there is something odd about the fact that the person in whose name this award is given would presumably not himself be considered a suitable candidate for the award.

I draw attention to Kaveny's observations about this award because she notes Paul Ramsey's exchange with Germain Grisez about the status of the early embryo to show that one can be passionately pro-life and not convinced that the embryo should be thought of as a tiny person from conception. She observes that Ramsey took seriously the problem that the phenomenon of twinning poses for such a view. For Ramsey, the fact that the early embryo may either split to produce twins or that multiple embryos may fuse to produce a mosaic was a serious problem for the position that personhood begins at conception. And Ramsey was particularly critical of Grisez's account of twinning, an account that compares twinning to forms of asexual reproduction found in other life forms. Ramsey was also puzzled by Grisez's comparison of a mosaic embryo to a plant that has had another grafted onto it. "With considerable astonishment we may ask," says Ramsey,

[W]hether any such ‘individuality’ [i.e. the individuality of the embryo before twinning or fusion with other embryos] is the life we should respect and protect from conception. In trying to prove too much, Grisez has proved too little of ethical import. (Ramsey, 1973, p. 192)

Or as Ramsey (1973, p. 194) says two pages later, “However large the quantum jump between abstract humanity of sperm and ovum and humanity of the zygote, the latter may not yet be Jill or Joyce.”

It seems to me that Ramsey’s caution that the early embryo may not yet be Jill or Joyce is important in the context of the debate over embryo adoption where, as we have seen, so many of the contributors have presumed that the issue is whether to rescue little Jills or Joyces, even when they have disagreed about the answer (see Mahowald, this volume, for another discussion of the status of the embryo). Indeed, we might ask of all parties to the debate, as Ramsey did of Grisez, whether in trying to prove too much, they in fact prove too little. Might not the discussion of embryo adoption be facilitated by shifting the terms of the debate from rescue to respect? In advocating that the lens through which we view the disposition of frozen embryos should change from rescue to respect, I do not mean that we should begin to talk about respecting the early embryo.<sup>8</sup> As Daniel Callahan (1995, p. 39) has pointed out, such talk is typically pretty meaningless, and it leads all too easily back to thinking of early embryos as very small people. Instead, I mean to press for a sense of the importance of respecting the integrity of the natural world, i.e., the sort of respect embedded in the opening section of *Donum Vitae* in which the CDF (1987, Intro., no. 1) warns that an inappropriate and uncritical acceptance of the biological and medical sciences can result in “the temptation to go beyond the limits of a reasonable dominion over nature.”

The sort of respect I wish to trumpet has been forcefully described by Courtney Campbell as “standing in awe.” As he puts it:

The scientific quest to understand the inner workings of life must be mediated by a foundational sentiment that life is a wondrous mystery, albeit a mystery amenable to our discovery. This sense of awe and wonder in the face of mystery can readily be lost by the routines of demystification that occur in biomedical research and clinical practice. (Campbell, 2001, p. 45)

Campbell rightly decries the reductionism that characterizes much of biomedicine these days. He is particularly critical of the tendency within science and medicine to treat the human body merely instrumentally, and he notes how sharply at odds such a view of the body is with a religious perspective that values the body intrinsically as a reflection of the image of God.

As Campbell notes, this instrumentalist view of the body has unfortunately been an inextricable part of modern reproductive medicine, where infertile men and women are often not treated holistically. Instead they are reduced to body parts, and reproduction is treated as the production of a product. Sperm and egg are

---

<sup>8</sup>In this way, the language of respect may be comparable to the language of adoption. As Sarah-Vaughan Brakman (2007) has argued, using the language of adoption to refer to embryo transfer does not entail, although it may encourage, a view of the early embryo as a person.

bought and sold and gametes are manipulated to produce embryos. Who provided the sperm and egg (and at what personal cost), what will be done with the embryos that result, and why any of this was being done to begin with, hardly seems to matter. Yet, as Campbell (2001, p. 41) points out, the scientific emphasis on technical efficiency that is so integral to the world of reproductive medicine, “is surely alien to anyone who has become, or considered becoming, a parent, an experience that is as generative and meaning-full as any that life offers us.”

What then would it mean to change the frame of reference of the embryo adoption debate from rescue to respect? First, it would require us to expand the debate from a narrow focus on the disposition of frozen embryos to the significance of the fact that reproductive medicine is so decidedly reductionistic. Worries about the disposition of frozen embryos would in fact become a kind of proxy for more holistic concerns about the attitudes toward human bodies and the world around us that are manifested in assisted reproductive technology. Framed in this way, concern about frozen embryos would seem emblematic of an attitude toward life itself that acknowledges a sense of amazement in the face of the beauty and order of the natural world. Such an attitude will look skeptically upon efforts to erode a sense of the natural or to push toward a posthuman future. Indeed, an attitude of awe and wonder about embodied human existence will generally be incompatible with any effort to treat our bodies as mere artifacts.

This is important because while non-Catholics may dismiss talk about frozen embryos as little persons, expressing concern about the fact that how we treat frozen embryos has implications for thinking about genetically altering embryos (and other biotechnological interventions that deeply impact the body) is authentically Catholic and may resonate with many beyond the faith community. Tying concern about frozen embryos with concern about our attitudes to the body and to the natural world is thus productive of moral reflection broadly. For example, although there are many points on which the philosopher, Martha Nussbaum, would sharply disagree with Catholic teaching, her recent work, *Frontiers of Justice*, intersects in interesting ways with Catholic incarnational theology and some accounts of natural law.

I cannot here do justice to the richness of Nussbaum’s work, but let me highlight several aspects of her account of justice that are directly relevant to our discussion. First, Nussbaum is clear that an adequate theory of justice will draw upon an Aristotelian view of human beings, which emphasizes our animal nature. In fact, she is quite clear that a Kantian view that contrasts personhood and animality is badly mistaken. Our dignity, she insists, inheres in our animal bodies; it is the sort of dignity that “could not be possessed by a being who was not mortal and vulnerable, just as the beauty of a cherry tree in bloom could not be possessed by a diamond” (Nussbaum, 2006, p. 132). Second, and related to the first point, stressing the animal and material underpinnings of humanity requires a relatively stable sense of the trajectory of human life. As she puts it, “there is dignity in human neediness, in the human temporal history of birth, growth and decline, and in relations of interdependency and asymmetrical dependency” (Nussbaum, 2006, p. 356). And that neediness is defined by the kinds of bodies we have as human beings. This is why Nussbaum (2006, p. 365) says that species membership is an important

concept: “The species norm (duly evaluated) tells us what the appropriate benchmark is for judging whether a given creature has decent opportunities for human flourishing.”

As I have argued elsewhere (Lauritzen, 2005, pp. 28–30) Nussbaum’s work helps us to see how accounts of human dignity and human rights are tied to biologically based views of the normatively human. And once we acknowledge that the notion of human rights is inextricably linked to some sense of a species norm and a relatively determinate human nature, we also see that debates about stem cell research and other forms of biotechnology have been much too narrowly framed. The same is true of debates about the disposition of frozen embryos. Once we recognize that discussions about embryo adoption are not ideally undertaken in isolation from the larger set of issues involving the purposes for which individuals and couples pursue parenthood or from the limits that these purposes place on reproductive interventions, we see that the discussion of the disposition of frozen embryos has been too constricted.

This constriction takes two forms that we have already noted. First, the debate about adopting embryos has been too closely tied to the question of embryo status. This is certainly familiar territory for bioethicists and Catholic moral theologians generally, but in a world increasingly populated by transgenic organisms, where centaurs and cyborgs no longer seem to be mythical creatures only, we need to move beyond traditional frames of reference. Second, Catholic debate about adopting embryos has been too inward looking and has failed to engage secular sources that might shed light on how to think about the disposition of frozen embryos. Connecting Catholic discussions of embryo donation to larger themes of human embodiment and respect for the natural world would help to avoid both kinds of constriction.

In addition to broadening the debate, changing the frame of reference from rescuing embryos to respecting the limits of biomedicine might lead us to focus on how infertile couples whose choices lead to the creation of frozen embryos in the first place often seem unclear about the meaning of their choices. Indeed, one of the striking findings of the studies that have investigated how couples think about the decision to donate embryos either for research or for adoption is how confused couples seem to be in thinking about their choices. As one study puts the point:

Participants found the unique status and relationship between themselves, their children and their embryos difficult to speak about because there is no language available that adequately portrays the experience or describes the relationship they clearly perceived. For the participants in this study, embryos were considered part of their family that existed yet simultaneously did not exist. Embryos were attributed a personhood that lacked physical presence but contained biology and spirituality. In this sense they acquired a virtual personhood. (de Lacey, 2005, p. 1665)<sup>9</sup>

---

<sup>9</sup> See also R.D. Nachtigall, G. Becker, C. Friese, A. Butler, & K. MacDougall (2005). ‘Parents’ conceptualization of their frozen embryos complicated the disposition decision,’ *Fertility and Sterility*, 84(2), 431–434.

We might do well to reflect in a sustained way about how the technical ethos that permeates the world of reproductive medicine can lead couples to lose sight of the reasons that originally led them to use reproductive technology. Thinking of and treating frozen embryos as disembodied, virtual persons seems very far removed from what was presumably the originating motive that led the couple to undertake IVF, namely, to bring forth new life into a loving and nurturing marriage. And just as couples can lose sight of the broader context of reproductive decisions for thinking clearly about frozen embryos, so, too, can ethicists when we ask about how to dispose of frozen embryos without a sustained analysis of reproductive technology. Debates about the proper object of the act when a woman gestates a frozen embryo or whether adopting an embryo is cooperation with evil or will give scandal are fine and good. Yet until discussions of embryo adoption are thoroughly embedded in conversations about the meaning of biotechnology for human embodiment, and until there is a recognition that the technologies that give rise to frozen embryos are both justified and constrained by the goal of bringing forth new life that will be respected and nurtured within a loving relationship, they will be partial and insular.<sup>10</sup>

## References

- Althaus, C. (2005). 'Can one "Rescue" a human embryo? The moral object of the acting woman,' *The National Catholic Bioethics Quarterly*, 5, 114–141.
- Berkman, J.R. (2003). 'Gestating the embryos of others: Surrogacy? Adoption? Rescue?' *The National Catholic Bioethics Quarterly*, 3, 309–329.
- Brakman, S.V. (2007). 'Paradigms, practices and politics: Ethics and the language of human embryo transfer/donation/rescue/adoption,' in M.J. Cherry & A.S. Iltis (Eds.), *Pluralistic Casuistry: Moral Arguments, Economic Realities, and Political Theory, Essays in Honor of Baruch Brody* (pp. 191–210). Dordrecht, The Netherlands: Springer.
- Brugger, E.C. (2005). 'In defense of transferring heterologous embryos,' *The National Catholic Bioethics Quarterly*, 5, 95–112.
- Callahan, D. (1995). 'The puzzle of profound respect,' *The Hastings Center Report*, 25, 39–40.
- Campbell, C.S. (2001). 'Source or resource? Human embryo research as an ethical issue,' in P. Lauritzen (Ed.), *Cloning and the Future of Human Embryo Research* (pp. 34–49). New York: Oxford University Press.
- Congregation for the Doctrine of the Faith (1987). *Donum Vitae (Instruction on respect for human life in its origin and on the dignity of procreation)*. Washington, DC: United States Catholic Conference.
- Davidson, J.L. (2001). 'A successful embryo adoption,' *The National Catholic Bioethics Quarterly*, 1, 229–233.
- de Lacey, S. (2005). 'Parent identity and 'Virtual' children: Why patients discard rather than donate unused embryos,' *Human Reproduction*, 20, 1661–1669.
- Geach, M. (1999). 'Are there any circumstances in which it would be morally admirable for a woman to seek to have an orphan embryo implanted in her womb?' in L. Gormally (Ed.), *Issues for a Catholic Bioethic*. London: The Linacre Centre.

<sup>10</sup> On this point, M.A. Ryan (2001). 'Creating embryos for research: On weighing symbolic costs,' in Paul Lauritzen (Ed.), *Cloning and the Future of Human Embryo Research* (pp. 50–66). New York: Oxford University Press.

- Iozzio, M.J. (2002). 'It is time to Support Embryo Adoption,' *The National Catholic Bioethics Quarterly*, 2, 585–593.
- Kaveny, C. (2006). 'When Does Life Begin? Two Pro-life Philosophers Disagree,' *Commonweal*, 133, 6.
- Lauritzen, P. (2005). 'Stem Cells, Biotechnology, and Human Rights: Implications for a Posthuman Future,' *Hastings Center Report*, 35, 25–33.
- Lejeune, J. (1992). *The Concentration Can: When Does Human Life Begin? An Eminent Geneticist Testifies*. San Francisco: Ignatius.
- May, W.E. (2005). 'On "Rescuing" Frozen Embryos: Why the Decision to Do So Is Moral,' *The National Catholic Bioethics Quarterly*, 5, 51–57.
- Nachtigall, R.D., Becker, G., Friese, C., Butler, A., & MacDougall, K. (2005). 'Parents' conceptualization of their Frozen Embryos Complicated the Disposition Decision,' *Fertility and Sterility*, 84(2), 431–434.
- Nathanson, B. (1984). *The Silent Scream* [Online]. Available: <http://www.silentscream.org/>.
- Nussbaum, M.C. (2006). *Frontiers of Justice: Disability, Nationality, Species Membership*. London: The Belknap Press of Harvard University Press.
- Onder, R.F. (2005). 'Practical and Moral Caveats on Heterologous Embryo Transfer,' *The National Catholic Bioethics Quarterly*, 5, 75–94.
- Ramsey, P. (1973). 'Abortion: A Review Article,' *The Thomist*, 20, 175–227.
- Ryan, M.A. (2001). 'Creating Embryos for Research: On Weighing Symbolic Costs' in P. Lauritzen (Ed.), *Cloning and the Future of Human Embryo Research* (pp. 50–66). New York: Oxford University Press.
- Tonti-Filippini, N. (2003). 'The Embryo Rescue Debate: Impregnating Women, Ectogenesis, and Restoration from Suspended Animation,' *The National Catholic Bioethics Quarterly*, 5, 112–137.
- Trudeau, G. (1985). 'Silent Scream II, the Prequel,' *Doonesbury. The New Republic*, June 10, 8–9.



# Embryo Adoption? An Egalitarian Perspective

Mary B. Mahowald

## 1 Introduction

Ethical questions about embryos generally center on determination of what if any moral status or right to life<sup>1</sup> is attributed to them; analysis of embryo adoption hinges not only on that determination but also on the decisions of and impact on those affected. In this essay I only minimally consider the moral status of the human embryo because different positions on this issue are apparently irresolvable on the level of social policy.<sup>2</sup> Because these positions are applicable to all human embryos, policies about adopting them should be consistent with other policies and decisions about embryos, regardless of how and why the embryos are obtained. I do not, therefore, distinguish between embryos that remain after infertility treatment and those that may be created for adoption. Personally, my views about the topic are consistent with but more restrictive than policies about embryos. With regard to policy as well as personal decision-making, the perspective I bring to my account may be described as egalitarian.

Using the term *adoption* in the title of this book tends to prejudge the question of the embryo's moral status by suggesting that embryos are already children. As such, regardless of whether an embryo is gestating within a woman, it has the same right to life as a newborn. Nonetheless, many people, including Catholics who have had children through in vitro fertilization (IVF), do not agree with this position. From the standpoint of some Catholics, therefore, it is possible to view obligations to children as different from those owed to in vitro embryos.

The egalitarian perspective of this essay imputes the same value to different individuals. From that starting point, it calls for identification and examination of

---

<sup>1</sup> Moral status and a right to life are different concepts, but the former is generally construed as entailing the latter, and it is this connection that underlies ethical controversies about human embryos. To what extent moral status or a right to life imposes obligations on others to sustain an entity's life is a different question than whether it has that right or moral status.

<sup>2</sup> I have considered a range of positions about moral status and personhood, see M. B. Mahowald (2006). *Bioethics and Women: Across the Life Span* (pp. 58–69). New York: Oxford University Press. These positions are applicable to life after birth as well as prior to birth.

differences to determine the extent if any to which they are associated with inequality, i.e., a reducible imbalance of capabilities among those who have the same value.<sup>3</sup> The moral obligation that follows from this determination is remedial: to promote the capabilities of those for whom they have been impeded to a level of potential flourishing that approximates the level of flourishing enjoyed by those whose capabilities have not been similarly impeded.<sup>4</sup>

The ethically relevant differences on which I focus arise from the disparate impact of embryo adoption on men and women. Gender justice, the defining characteristic of feminism, is a necessary subset of justice. As such, it is indispensable to egalitarian analysis of the topic, a point Darlene Weaver also makes in her contribution to this volume. Each use of the term “egalitarian” in this essay should therefore be understood as “feminist.”<sup>5</sup>

Procedurally, I utilize two methods through which bioethical issues may be examined.<sup>6</sup> The first is the traditional philosophical method of reasoning from principles to particulars. The second is a revived form of casuistry, which attempts to resolve new ethical questions by comparing them with previous cases in which similar questions were answered. Both methods are helpful in formulating laws or policies about embryo adoption, but neither is adequate to the moral assessment required for individuals engaged in the process. After explaining why this is so, I suggest how the topic might be more effectively addressed in social policy, and how I, as an individual, view some of the ethical questions raised by embryo adoption. Preliminarily, I offer clarifications about what constitutes a human embryo, the meaning of “adoption,” and the circumstances in which human embryos may be “adopted.”

## 2 What Is an Embryo?

Biologists and infertility specialists define a human embryo as a fertilized ovum, i.e., an organism whose development is triggered through fertilization of a human egg by human sperm.<sup>7</sup> This usually occurs within a woman’s body (in vi vo) but it may also occur in a laboratory (in vitro). The term “embryo” also refers to a living

<sup>3</sup> Capabilities theory has been developed by Amartya Sen and Martha Nussbaum, among others.

<sup>4</sup> The term “potential” is used here to allow for the possibility that those whose capabilities are fostered may choose not to fulfill their capability for flourishing.

<sup>5</sup> For an excellent account of versions of feminism that represent different conceptions of justice and equality, see R. Tong (1998). *Feminist Thought*. 2nd edition. Boulder, Colorado: Westview Press.

<sup>6</sup> I explain and assess both methods more thoroughly in *Bioethics and Women* (2006), pp. 10–15, 37–40.

<sup>7</sup> Cf. S.F. Gilbert (2000). *Developmental Biology*. 6th edition. Sunderland, Massachusetts: Sinauer Associates, p. 363 and W.J. Larsen (1997). *Essentials of Human Embryology*. New York: Churchill Livingstone, p. 14.

organism at the earliest stage of its development, i.e., from the one-cell stage (zygote) until multiple cell divisions have led to differentiation of the cells into the basic structures needed for further development. At that point (about 2 months after conception), the organism is called a fetus.<sup>8</sup>

Although the terms “fertilization” and “conception” are often used synonymously, they refer to different points in development. Conception takes place after fertilization, when the embryo implants in a woman’s uterus, initiating pregnancy or gestation.<sup>9</sup> Both fertilization and conception differ from the process through which development is induced biochemically or electrically in an enucleated ovum (egg) into which the nucleus of an adult cell has been transferred; in this process, commonly called cloning, there is only one genetic parent.<sup>10</sup> Cloning has not yet been reliably reported in humans; if and when it occurs, the resultant organism may be considered an embryo because, like fertilized ova, it is capable of further development as a distinct organism.<sup>11</sup>

Some authors prefer to call the developing organism from the one-cell stage until implantation a “preembryo.” This usage is correct if “preembryo” is understood as a shortened form of “preimplantation embryo.” It is misleading, however, if “preembryo” means that the embryo is not yet capable of continuing its development. The zygote contains not only the capacity to differentiate into an implantable embryo (or multiple embryos) but also into a portion of the placenta on which the embryo depends for further development.<sup>12</sup> It may thus be construed as containing not only the embryo but extraembryonic material as well. At the earliest stage of cell division, the inner cell mass that forms the implantable embryo is not yet differentiated from the extraembryonic material. Multicellular embryos (blastocysts) are only capable of continuing their development if implantation occurs within a woman’s uterus.<sup>13</sup>

---

<sup>8</sup>Cf. M.B. Mahowald (1995b). ‘The fetus: Ethical and philosophical issues,’ in W.T. Reich (Ed.), *Encyclopedia of Bioethics* (pp. 851–857). Revised Edition. New York: Simon and Schuster Macmillan. Although I use the term embryo without specifically designating it as human, it should be understood that we are only speaking of human embryos when we discuss the possibility of adopting them.

<sup>9</sup>The term “pregnancy” refers to the status of the woman in whom the embryo continues to develop; the term “gestation” refers to the status of the embryo within the pregnant woman.

<sup>10</sup>Biologists use the term cloning for a variety of ways in which DNA can be replicated. These need not be human, and in many cases have no potential for becoming a whole organism.

<sup>11</sup>To distinguish the cloned organism from embryos obtained through fertilization, Paul McHugh, a member of the President’s Council on Bioethics, has proposed the term “clonote.” The Council, however, distinguishes between the two by referring to organisms obtained through somatic cell nuclear transfer as “cloned embryos” and using the term “embryo” without the modifier (“cloned”) for embryos obtained through fertilization.

<sup>12</sup>Cf. President’s Council on Bioethics (2004). *Monitoring Stem Cell Research* (p. 148). Washington, DC, 2004. Available at [www.bioethics.gov](http://www.bioethics.gov).

<sup>13</sup>Occasionally, the embryo may begin to develop within the fallopian tube instead of the uterus. However, these “tubal pregnancies” cannot be sustained and pose a grave risk to the woman.

In nature, neither fetuses nor embryos exist apart from the body of the woman who provided the ova.<sup>14</sup> Currently, however, embryos can survive for a time apart from women after the ova have been fertilized in vitro or after being flushed from a woman's body; in neither case is it necessary for the ova to have come from the women who gestate the embryos.<sup>15</sup>

Fetuses and in vivo embryos continue to develop within a woman unless they expire naturally or are prevented from doing so through abortion. In contrast, further development of in vitro embryos can be delayed (through freezing), prevented (through direct termination or by allowing them to expire), or facilitated (through transfer to a woman capable of gestation). If a woman gestates an embryo formed from another woman's ova to provide the latter with a child to whom she is genetically related, the woman is commonly called a "surrogate mother." This term is also used for situations in which a woman is both genetically and gestationally related to the child she bears for someone who intends to raise the child, i.e., the child's social parent.<sup>16</sup> The sperm used for insemination of the "surrogate" may be from the intended social father or from a different man. Whoever provides the sperm is the potential child's only biological father.

Using the term "surrogate" for a woman who gestates and gives birth to a child who is not genetically related to her suggests that she is not a "real" mother but one who merely stands in place of one; the "real" mother, then, is the one who provided the ova but did not bear and give birth to the child. Throughout history, however, a mother has generally been defined as one who gives or has given birth; this definition long preceded an understanding of the genetic tie to offspring. Only since the latter half of the twentieth century has it been possible to sever the link between gestation and the gestator's genetic tie to her offspring. This option has given women three different ways of becoming biological parents. The usual route, of course, is for a woman to conceive, gestate, and give birth to a child to whom she is genetically related. Today, however, a woman may also become a biological mother either by having her ova retrieved and fertilized in vitro, then transferred to another woman for gestation, or by having an

---

<sup>14</sup>Cf. M.B. Mahowald (1995a). 'As if there were fetuses without women: A remedial essay,' in Joan C. Callahan (Ed.), *Reproduction Ethics and the Law* (pp. 199–218). Bloomington, IN: Indiana University Press. Considering the fetus as if it is separate or separable from a woman illustrates the fallacy of abstraction, i.e., using a term as if its meaning were intelligible without reference to someone or something to which that meaning is necessarily related.

<sup>15</sup>Gamete interallopian tube transfer (GIFT) allows fertilization to occur within the woman's body after ova have been retrieved from another woman.

<sup>16</sup>I have discussed (1993) the distinction between these two types of "surrogacy," and legal cases involving each in *Women and Children in Health Care: An Unequal Majority* (pp. 104–110). New York: Oxford University Press, 1993.

embryo formed in vitro from another woman's ova transferred to her for gestation.<sup>17</sup>

For women, therefore, having a genetically related child does not necessarily mean that the woman has given birth to the child, and giving birth does not necessarily mean that she is genetically related to the newborn. Men still have only one route to biological parenthood, viz., their genetic contribution to offspring. However, social parenthood does not require biological parenthood for either sex. Neither does biological parenthood require social parenthood; men or women may provide their gametes and women may gestate embryos without becoming or intending to become social parents.

Ovulation stimulation, which routinely precedes ova retrieval and in vitro fertilization, often produces more ova than those required or desired for treatment of infertility. The remaining in vitro embryos may then be donated by the gamete providers to another woman or couple. A potential gestator or recipient of donated embryos must undergo medical interventions that prepare her body for pregnancy. By bearing and giving birth to a child after transfer of the embryos, she becomes a gestational mother. Women who gestate donated embryos may be viewed as having adopted them if they intend to become social mothers after birth.<sup>18</sup> Nongestating women and men who commit themselves to care for the resultant newborn may also be viewed as having adopted the embryo; for them, however, care of the adopted embryo can only be undertaken through the gestating woman.

### 3 What Is Adoption?

A general definition of "adoption" is "the act of accepting with approval," or a "favorable reception."<sup>19</sup> A more formal definition is commonly employed for adoption of children:

---

<sup>17</sup> The uterine environment of the developing embryo affects the expression of genes and influences the health and viability of the potential child. Some women value this gestational tie to offspring more highly than the genetic tie. Cf. A.J. Ravin, M.B. Mahowald and C.B. Stocking (1997). 'Genes or gestation? Attitudes of women and men about biologic ties to children,' *Journal of Women's Health*, 6, 6: 1-9 and J.G. Thornton, H.M. McNamara, and I.A. Montague (1994). 'Would you rather be a "Birth" or a "Genetic" mother? If so, how much?' *Journal of Medical Ethics*, 20, 87.

<sup>18</sup> Interestingly, however, women who intend to raise the child born after they gestate embryos formed in vitro through fertilization of donated ova by their partner's sperm are not legally required to adopt the children after birth. Gestation without the intention of becoming a social parent could be considered a temporary form of adoption, but, as we will see in the next section, adoption usually means that the one who adopts establishes as permanent a tie as biological parenthood.

<sup>19</sup> <http://www.google.com/search?hl=en&lr=&oi=defmore&defl=en&q=define:adoption>.

**Adoption:** The official transfer through the court system of all of the parental rights that a biological parent has to a child, along with an assumption by the adopting parent of all of the parental rights of the biological parents that are being terminated and are assumed in their entirety by the adoptive parents, including the responsibility for the care and supervision of the child, its nurturing and training, its physical and emotional health, and its financial support.<sup>20</sup>

Both definitions are applicable to embryo adoption, and both shed light on its implications for the parties involved. A key aspect of the first definition is conveyed through the term “approval,” which suggests that the adopting party or parties acknowledge that the entity has a value in its own right, regardless of whether it serves the goals of the potential parent or parents. An entity that is adopted, therefore, is not a mere possession, the value of which is solely determined by its possessor, who may do whatever he or she likes with what is possessed. The attribution of value-in-itself to the adopted entity implies that the adopting party has some limitations in its regard; in other words, adoption entails responsibility, or limitation of rights, towards whatever or whoever is adopted.

In the second definition of adoption, the rights and responsibilities of parenthood are relinquished by genetic parents and imputed to adoptive parents. Unless such relinquishment occurs, therefore, either genetics or adoption makes one fully a parent of a particular child. Because children are persons who, as such, are not mere objects that may be owned and disposed of at will by other persons, the parent–child relationship cannot be one of mere possession. Admittedly, the possessive case is prevalently used for relationships between people (e.g., *her* parent, *his* wife, *my* friend), but this usage is neither legally nor morally comparable to the relationship between persons and the commodities they own, which may be disposed of at will (e.g., *my* income, *our* house, *her* watch). Societally, the limitation of parental rights towards children is expressed in laws by which they may be prosecuted for failure to provide adequately for their children, and children may be removed from the care of neglectful parents to the care of those who will care for them adequately.<sup>21</sup>

Both definitions support attribution of the same rights and responsibilities that belong to biological parents to adoptive parents. But neither definition identifies the fact that men and women do not, in practice, have the same rights and responsibilities as parents. Men can become biological fathers anonymously through sperm donation, but anonymity for women who provide ova or gestation is difficult if not impossible to achieve.<sup>22</sup> Some men do not know or care to know that they are biological parents;

<sup>20</sup> <http://glossary.adoption.com/adoption.html>.

<sup>21</sup> This argument can also be made in behalf of sentient animals that humans may be inclined to treat as mere possessions. The argument is most persuasive when the animal is a pet that, as such, has a relationship to humans who, by “adopting” it, assume responsibilities towards it that are more demanding than those towards mere possessions, but less demanding than the responsibilities of humans towards one another.

<sup>22</sup> Assistance of medical professionals is always necessary for ova retrieval, and pregnancy, at least in its later stages, is physically apparent.

other men know this but do not exercise either their rights or their responsibilities for their children. Women who give birth know that they are biological parents, and most but not all exercise both rights and responsibilities towards their offspring. These differences, along with gender-based social expectations, make women considerably more likely than men to be held legally or morally liable for failure to fulfill responsibilities towards their biological children. With adoptive parents, the liability for failure may be distributed between parents of the same sex or the opposite sex, or solely attributed to a single parent of either sex. Except for the impact of gender roles, adoption of children may thus facilitate a more equitable distribution of rights and responsibilities between the parents. It is also more likely than biological parenthood to facilitate recognition that children are persons in their own right rather than commodities or possessions owned by their parents.<sup>23</sup>

Recognition that children have rights independently of their parents may be more likely for parents of adopted children, but it is not necessarily more likely for women or couples who, in the course of adopting embryos, select only those most likely to produce the children they would like to raise. This possibility is also available to people who adopt children with specifically chosen characteristics, and, to a lesser extent, to biological parents through prenatal testing and termination. Wherever it occurs, however, selecting or refusing specific embryos or children tends to make the relationship between them and the adoptive or parenting party less like one between persons and more like one of possession or ownership. Children are surely not the property of their parents because they have moral status and rights independent of them. If embryo adoption resembles adoption of children, therefore, neither should embryos be regarded as property.

Incorporating the meanings of a human “embryo” and “adoption” into an understanding of the circumstances in which adoption of embryos could occur, we can delineate the following steps as those required for embryo adoption by a woman or couple:

1. Hormonal treatment of the woman to prepare her body for pregnancy;
2. Transfer to her uterus of an embryo formed from another woman’s egg that was fertilized in vitro (with sperm from her partner or from someone else);
3. Gestation of the embryo until the woman gives birth to a newborn;
4. Fulfillment of parental obligations to the child by the woman or couple who agreed to the adoption.

---

<sup>23</sup>The importance of this recognition was unforgettably conveyed to me during my first pregnancy, when I visited a colleague with three young children, all of whom were taking naps when I arrived. As they emerged from their naps, one by one in age order I noticed that the oldest child resembled her parents, the second looked somewhat different, and the third was obviously of a different race than her parents. I assumed that the first child was biologically related to her parents, and that the third was adopted, but I was not sure about the middle child. While explaining that all three were adopted, the mother offered an insight I have tried to apply to parenting three biologically related children. “The great thing about adoption,” she said, “is that you’re not inclined to have preconceived notions about what your kids will become. It’s really clear that your job is to help them flourish as whoever they are, and they get to show you that as they develop.”

Obviously, if men are considered capable of embryo adoption, the requirements for them are considerably less demanding than those required of women. Regardless of whether a man pursues the adoption as one of a couple or as an individual, his decision entails a commitment to raising a particular child after birth. Nonetheless, it is a woman's body, not his, that is affected by what is done or not done to the embryo or fetus.

Discussions of embryo adoption tend to ignore its different impact on women and men, apparently assuming that the embryos provided by couples are only available, or should only be available, to heterosexual couples who agree about the risks and burdens it entails for only one of them (Cf. Weaver, this volume). The couple, then, makes *their* decision that the woman shall undergo hormonal treatment, transfer of the embryo formed from donated gametes, gestation, and childbirth, with both partners committing themselves to parenting after birth. In fact this is the way Suzanne and John Stanmeyer relate their decision-making process in this volume. The assumption that partners always agree about what shall be done or not done is challengeable on grounds that they are not a single moral agent but two, i.e., individuals whose views are not always the same, especially when one is so much more impacted by a decision than the other. Each member of a couple makes a morally distinct decision. The fact that different moral agents are differently affected can introduce conflicts among them even if there is agreement about the moral status or right to life of embryos. In the next two sections, therefore, we explore possible ways by which potential conflicts may be resolved.

#### 4 A Principle-based Approach to Embryo Adoption

Among ethical principles that may be invoked to address embryo adoption, respect for the autonomy of those involved is central. From an egalitarian perspective, however, this principle does not always supersede other ethically relevant principles. When the interests of others may otherwise be disproportionately compromised, justice has priority over respect for the autonomy of individuals. In this regard, the principle proposed by the National Commission for the Protection of Human Subjects in 1975 is particularly pertinent. While developing guidelines for research with human fetuses, the Commission examined whether those that women intend to abort should be treated differently than those they intend to carry to term. Without offering a position on the moral status of the fetus, the Commission invoked a "principle of equality" by which it recommended that all fetuses should be treated in the same way because they have the same value.<sup>24</sup> If embryos were to be used in research, for example, the research should have no more harmful effects for those destined to be aborted than for those destined to go to term.

---

<sup>24</sup>National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, (*Research on the Fetus*, 1975), accessed at [http://bioethics.gov/reports/past\\_commissions/index.html](http://bioethics.gov/reports/past_commissions/index.html).



This conception of equality may be construed as an articulation of the principle of justice, i.e., as requiring that individuals that have the same value be treated in a way that reflects this recognition. Despite the interpretation of the Commission, however, attribution of the same value to different individuals does not imply an obligation to treat them in the same way. On the contrary, just as parents treat children differently and clinicians treat patients differently while imputing the same value to each child or patient, people in general treat one another differently without implying that they attribute less value to some than to others. The fact that the practice of individuals is sometimes at odds with this evaluation of different people does not detract from its moral justification.

The principle of equality is applicable to embryos without having to settle the thorny question of the embryo's moral status or personhood<sup>25</sup> because it is possible to agree with this position without viewing embryos as having the same moral status as born human beings. If embryos have partial moral status, they may all be viewed as having that status, but no embryo should be attributed less value or greater value than other embryos. In vitro embryos thus have the same value as in vivo embryos, and in vitro embryos all have the same value – regardless of whether they are transferred for treatment of infertility, used for research, preserved for future transfer or research, allowed to die, or directly terminated. If this view of equality is as applicable to embryos as it is to born human beings, it also means that abnormal human embryos have the same value as those that are normal.

Not only is this interpretation of equality applicable to embryos; it is also, simultaneously and a fortiori, applicable to the progenitors of the embryos and the potential parents, all of whom, as indisputably persons, have the same value. However, applying it to those who unquestionably have full moral status does not imply that their decisions are equally supportable. If, for example, the progenitors disagree about disposition of their embryos, the decision of the woman deserves priority over that of her partner on grounds that she, not he, has faced considerable risks and burdens through generation and survival of the embryo. Similarly, if the adopting partners disagree, the decision of the gestating woman deserves priority over that of her partner – not because the partners themselves are unequal but because they are unequally burdened by the consequences of decisions about pregnancy. After birth, this priority may change if the main burden of parenting is shared or shifts to the other parent. Laws governing abortion as well as the rights and responsibilities of adoptive parents reflect this reasoning.<sup>26</sup>

---

<sup>25</sup>The term “personhood” generally applies to entities that have full moral status. This allows for the possibility that embryos have partial moral status without being persons. It is possible, nonetheless, to impute full moral status to entities that are not persons.

<sup>26</sup>For example, women's decisions about termination or continuation of pregnancy take precedence over those of their partners because it is the gestating woman rather than her partner who is directly affected by decisions made in her own behalf or in behalf of the potential child.

Unfortunately, although the principle of equality is applicable to embryos without addressing the question of moral status, and applicable to born human beings without comparing them with embryos, this principle alone is an inadequate tool by which to assess the morality of embryo adoption. It is inadequate because embryo *adoption* involves relationships between the embryos and their progenitors as well as the potential parents. Here, not surprisingly, is where the question of the embryo's moral status is unavoidably intertwined with ethical assessment of embryo adoption.

If the embryo has no moral status, the ethical issues that arise are mainly conflicts between the interests or desires of those affected by the adoption. As mentioned above, these conflicts may be settled by giving priority to the autonomous decisions of the persons most at risk or burdened by the process. If embryos have partial moral status, their interests are morally relevant but not to the extent of overriding the interests or wishes of those already born. If embryos have full moral status, however, their interests are comparable to those of children, and it may credibly be argued that they may even be adopted against the wishes of their progenitors, as long as there are women who are able and desirous of gestating them and raising the children they may become.<sup>27</sup> Such "mandatory donation" of embryos as is currently the law in Louisiana and some countries (Cheeley, this volume), is comparable to the socially endorsed practice of removing children from the custody of neglectful biological parents to insure that they are adequately cared for by those who are able and willing to care for them. It may even be argued that there should be concerted efforts to find such women so that embryos that are now being cryopreserved throughout the world can be thawed and transferred to women in whom they can resume their development.<sup>28</sup> Such an effort could be defended not only on grounds of the moral status of the embryos but also on the principle of respect for the autonomy of the women who wish to gestate them.<sup>29</sup> Given these very different implications of different positions about moral status and the apparently intractable nature of the controversy with regard to embryos, the principle of equality is clearly an inadequate approach by which to resolve ethical quandaries involving embryo adoption.

---

<sup>27</sup> Admittedly, this implies the permissibility of mandatory donation of in vitro embryos by their progenitors.

<sup>28</sup> In 2003, there were at least 400,000 embryos stored in cryopreservation facilities in the USA alone. By now there are surely many more that could be transferred for gestation. Cf. D.I.Hoffman, G.L. Zellman, C.C. Fair et al. (2003). 'Cryopreserved embryos in the United States and their availability for research,' *Fertility and Sterility*, 79: 1063–9.

<sup>29</sup> On an analogy with foster care of children, it may also be argued that women may agree to gestate embryos for those who wish to become social parents of the children to whom they give birth. William E. May (Spring 2005) argues along these lines in 'On "Rescuing" frozen embryos: Why the decision is moral,' *National Catholic Bioethics Quarterly*, 5, 1: 51–57.

## 5 A Casuistic Approach to Embryo Adoption

Possibly a more helpful strategy for assessing ethical issues in embryo adoption is the approach delineated by Albert Jonsen and Stephen Toulmin in their account of medieval casuistry.<sup>30</sup> Despite the questionable history of this method,<sup>31</sup> Jonsen and Toulmin have proposed casuistry as a means of settling ethical dilemmas. Their delineation of the method involves the following steps:

1. Select an already-settled paradigmatic case or issue that resembles the new issue;
2. Identify the ethical rules or maxims that were applied to the paradigmatic case or issue;
3. Apply these maxims to the new issue;
4. Determine the certainty (or uncertainty) of the conclusion reached on grounds of how closely the new case resembles the old one.<sup>32</sup>

Two paradigms are potentially relevant to assessment of the new issue of embryo adoption: postmenopausal gestation and adoption of children. Both paradigms involve a crucial feature of embryo adoption, i.e., a commitment to social parenthood. Although the ethics of postmenopausal gestation is hardly a settled matter, it involves the same process and purpose as embryo adoption. The latter is a more encompassing paradigm because it applies to women who are not postmenopausal as well as those who are, and may, arguably, apply to men also. In contrast, postmenopausal gestation involves only embryos formed in vitro from donated ova, fertilized by sperm from the partner of a postmenopausal woman or from a sperm bank, and transferred to the postmenopausal woman, who intends to raise the offspring after birth. Although the woman lacks ova due to menopause, she is capable of gestation as long as she still has her uterus and her body has been prepared for pregnancy through administration of hormones. If embryos are successfully transferred and implanted so that pregnancy is established, the woman can give birth to a child to whom she is gestationally but not genetically related.

Gestational “surrogacy” involves the same process as postmenopausal gestation, except that the woman who gives birth does not intend to raise the child. In addition, the child born to a postmenopausal woman may have two biologically

---

<sup>30</sup> A. Jonsen and S. Toulmin (1989). *The Abuse of Casuistry*. Berkeley, CA: University of California Press. The term “casuistry” has been used to describe any case-based approach to issues in bioethics. Baruch Brody’s defense of “pluralistic theory” is a well-developed example of this usage. Despite Brody’s effort to distinguish between his interpretation of casuistry and Jonsen and Toulmin’s, their interpretations are consistent with each other, and have substantially the same strengths and liabilities. Cf. B.A. Brody (2003). *Taking Issue: Pluralism and Casuistry in Bioethics* (p. 40). Washington, DC: Georgetown University Press.

<sup>31</sup> Casuistry has generally been viewed as a medieval application of sophistry, i.e., a persuasive but fallacious and misleading form of argument debunked by Socrates in the writings of Plato.

<sup>32</sup> Cf. Jonsen and Toulmin, pp. 306–307.

related social parents: the woman who gestates and the man whose sperm was used to fertilize the donated ova. However, the legal rights and responsibilities acquired solely through gestational “surrogacy” or postmenopausal gestation are the same during the course of the pregnancy as those acquired by any pregnant woman: She may terminate the pregnancy or choose to continue it. Moreover, in all three situations, the morality of the woman’s decisions about the embryo within her cannot be adequately assessed without confronting the issue of the embryo’s moral status.<sup>33</sup>

Although the paradigm of postmenopausal gestation is applicable to embryo adoption, the term “gestation” fails to capture the feature that makes this situation morally different from that of gestational “surrogacy,” i.e., the woman’s intent to parent the child. This paradigm is also problematic because it involves situations in which the woman’s inability to have a genetically related child is a normal, healthy condition for her. If the woman has become menopausal prematurely (e.g., through treatment for cancer) or has ovarian agenesis (absence of ovaries), support for postmenopausal gestation is stronger than for those in whom menopause occurs during the normal course of the life cycle. The egalitarian rationale for this difference is that the younger woman lacks a capability that the older woman has already had.

Unlike postmenopausal gestation, adoption of children is widely viewed not only as defensible but as a commendable route to parenthood. Through adoption, an individual or couple become legally and morally parents some time after the birth of a child to whom they are not biologically related. Occasionally, the child is biologically related to one parent but not to the one who adopts the child. In comparison with the obligations of pregnant women to their fetuses, the obligations of parents towards their children are longer lasting, more demanding on a daily basis, and enforceable by law.<sup>34</sup> Moreover, prior to the birth of their biologically related progeny, neither women nor men are legally parents who, as such, have a duty to insure the welfare of their dependent children.<sup>35</sup> Because adopted children are persons in their own right,<sup>36</sup> adoptive parents are just as legally and morally obliged as biological parents to care for them adequately until and unless they are able to care

---

<sup>33</sup> Legal scholars may dispute this point on grounds that “surrogates” are bound by contract to promote the welfare of the potential offspring. In no case as yet, however, has this position been construed as overriding the right of a woman to terminate her pregnancy.

<sup>34</sup> In normal healthy pregnancies, fetuses develop without the daily attention of the pregnant woman; infants and young children cannot survive without persistent attention from parents or parent substitutes.

<sup>35</sup> Nonetheless, women have been socially condemned and even been penalized by the law for behavior that may threaten the welfare of their potential offspring.

<sup>36</sup> Some philosophers argue that personhood demands moral agency, which is lacking in infants, young children, and some adults. Even they, however, usually argue that children should be treated as persons because of their potential for moral agency and that adults who are no longer capable of moral agency should be treated as persons because they previously had that capacity.

for themselves. Once children are adopted, the biological parents who relinquish them no longer have parental rights or responsibilities regarding them.

Despite societal lapses in exacting the fulfillment of responsibilities for children from male as well as female parents, both fathers and mothers incur responsibilities for children, whether they become parents through biology or adoption. From an egalitarian perspective, these responsibilities, although not necessarily identical, should be equitably shared, as should the rights of both parents regarding their children. The same rights and responsibilities are not similarly applicable to gestating women and their partners because they are not yet parents, and the basic needs of the potential offspring can only be met by one of the potential parents. These differences must be taken into account in determining whether embryo adoption is as morally justified or commendable as adoption of children.

In comparison with postmenopausal gestation, then, there are three major reasons for choosing the paradigm of adoption of children as a better, albeit imperfect, paradigm for embryo adoption. First, as outlined above, postmenopausal gestation does not exact an unchangeable commitment on the part of the gestator to provide for the continued life and welfare of the embryo, whereas adoption demands this of parents. A second reason is the developmental continuity between embryos, fetuses, and newborns, through which the adoption of the embryo is construed as adopting the child that the embryo, if not impeded in its development, will become. On this rationale, embryo adoption is morally equivalent to early adoption. Third, there is as yet no broad social endorsement of postmenopausal gestation, whereas there is such endorsement for the alternative paradigm, adoption of children. Without that endorsement, positions reached through comparison with postmenopausal gestation are more problematic than those reached through comparison with adoption of children.<sup>37</sup>

Having selected the better paradigm, what rules or maxims lead us to consider adoption of a child a morally acceptable or commendable practice? These are prompted, I believe, by empirical observations that are universally accessible: children have basic needs that can only be fulfilled by others, some biological parents are unable or unwilling to provide for the basic needs of their children, and some adults are desirous and capable of fulfilling the basic needs of children to whom they are not biologically related. In light of these observations, if children are persons, with the same moral status as adults, support for adopting them may be based on the following maxims:

1. All children deserve the care they need to survive and thrive;
2. Adults capable of providing for the needs of children may adopt them if the biological parents are unable or unwilling to do so.

---

<sup>37</sup>Cf. Brakman, 2007.

Differences between the paradigmatic case and the new case reduce the probability that the conclusion to which the above maxims lead is as justified in the new case as in the paradigm. As we have seen, crucial differences between adoption of children and adoption of embryos are the fact that embryos are not children (although some pro-life advocates claim they are), and the fact that there is but one adult capable of providing the care necessary for the embryo to survive and thrive until birth, whereas other competent adults can do this after birth. Each of these differences weakens moral justification based on the adoption of children paradigm. If human embryos were unarguably children, the first difference would disappear and moral justification would be stronger. However, the second difference would still restrict the class of people who may adopt embryos to women capable of both gestation and parenting after birth. Not only men but women incapable of gestation would then be excludable from eligibility for embryo adoption even though they might adopt the children that the embryos become at birth.

I conclude that both principle-based and casuistic reasoning facilitate understanding of the ethical complexity of embryo adoption, but neither method leads to clear conclusions about the morality of the practice. The main weakness of the principle-based approach, if the principle invoked is that of equality, arises from the fact that this principle is applicable to embryos and born persons separately without addressing the inevitable connection between them. The main weakness of the casuistic method arises from unavoidable and relevant differences between adoption of children and adoption of embryos. With neither method is it possible to resolve the ethical questions about embryo adoption, including disputes between potential parents or progenitors, without dealing with the question of the moral status of human embryos.

## 6 What, Then, Are We to Do?

My answer to the above question starts with recognition that “we” means all of us, most of us, or at least more than “I.” This distinction between “we” and “I” suggests another one: between policies or laws that apply to many people, and the moral decisions of individuals, as “I’s.” Because policies and laws apply to people in general, they are not meant to reflect all of the moral values that individuals as such embody or support. Neither are they capable of identifying all of these values, nor of attending to all of the morally relevant nuances of situations that individuals face. In light of these limitations, policies usually serve mainly as guidelines that allow individuals to judge for themselves whether they are applicable to particular situations; and laws, especially in a pluralistic society such as ours, attempt to promote justice as fairness while also supporting respect for the morally different views of individuals. An unavoidable but crucial difference in this regard involves the incompatibility of positions about the embryo’s moral status. Laws and policies attempt to respect these different views by permitting individuals to make their own decisions on the matter. In doing so, they implicitly give priority to the autonomy of individuals.

Because the enforceability of law curtails the autonomy of individuals, legislation tends to have a more limited scope than policies. It is not surprising, therefore, that there are few if any laws governing the adoption of embryos (Cheele y, this volume). Moreover, because practitioners as well as patients vary considerably in their views about the moral status of embryos, it is not surprising that the policies of professional organizations provide only very general guidance relevant to embryo adoption. Typically, professional guidelines give greater weight to the autonomy of professionals and their patients or clients than they do to the demands of justice.

For individuals, who are ultimately responsible for their own moral decisions, policies and laws offer information that is ethically relevant to them as members of specific communities. With regard to embryo adoption, however, individuals must look beyond permissive laws and policies if they wish to make decisions that reflect their personal moral values. As we have seen, the very language of embryo adoption points to a commitment of the potential parent to care for the child that an embryo may become, and this commitment carries a moral onus, despite the absence of legal enforceability. A woman who undertakes embryo adoption has thus implicitly committed herself to the welfare of the potential child. Her partner may join her in this commitment, but neither partner may morally be coerced to parent the child they adopted as an embryo. As with parents of genetically related children, the state may remove children from the care of adoptive parents who fail to care for them adequately, and adoptive parents may legally relinquish their children to the care of others through another adoption or placement.

During gestation, if one of the adoptive partners disagrees with the other about whether to proceed, perhaps because prenatal testing shows a chromosomal anomaly in the fetus, the question that obviously arises is which partner's autonomy should be respected. In such a situation, it is inevitable that one of the partners will unwillingly become a social parent while the other unwillingly relinquishes that role. Legally, the autonomy of the pregnant woman overrides that of her partner because her body, not the partner's, is directly affected by what is done or not done to the embryo or fetus. Unless there are moral obligations to the fetus or embryo, an egalitarian perspective supports this priority.

It is also possible, of course, that both of the adoptive parents change their minds and wish to terminate the pregnancy after gestation is established. Here, the paradigm of adoption of children shows its limits because, while it is permissible to relinquish a child to the care of others after birth, this does not entail a right to end the life of the child, even if the child is severely impaired. However, both legal statutes and professional guidelines permit abortions until viability, and in common practice, women who are informed of a serious anomaly in their fetus usually choose to terminate their pregnancies.<sup>38</sup> From an egalitarian standpoint, terminating a pregnancy to a void giving birth to a child with disabilities is challengeable on

---

<sup>38</sup> Cf. R. Rapp (2000). *Testing Women, Testing the Fetus* (p. 223). New York: Routledge.

grounds that it implies disregard for people already born with disabilities. Although this is not necessarily the rationale for the decision, it is nonetheless true in many cases.<sup>39</sup>

Unlike the legal permissibility of abortion, the legal permissibility of embryo adoption does not assume that embryos may be destroyed. As long as abortion is legally available, a woman may legally terminate her pregnancy but the legality of her doing so is based on abortion law, not adoption law (Cheeley, this volume). Ethically, the commitment of adoption precludes the destruction of gestating embryos even if prenatal diagnosis reveals a genetic anomaly. A similar point may be made for women who undergo prenatal tests with the intention of terminating their genetically related embryos if the results are positive: They have not yet decided to be parents. In this regard, the crucial difference between decisions made before and after birth is obvious: Termination that is legally permissible during gestation is impermissible after a child is born, regardless of whether anomalies are present.

Laws and policies about embryo adoption thus contribute to an understanding of the complexity of the practice, and facilitate resolution of conflicts among those who are directly involved, i.e., the progenitors and the potential parents. If the embryo's moral status is ignored, these conflicts are resolvable through the principle of equality, which gives priority to the decisions of those who face the greatest risks or burdens of gestation and parenting, and by applying the maxims applicable to the adoption of children to the practice of embryo adoption. Prior to gestation, the autonomy of the progenitors has priority over that of the potential gestator or potential parents, and the autonomy of the ova provider has priority over that of the sperm provider on grounds of their disparate contributions to the process. Once gestation is established, however, the autonomy of the pregnant woman has priority over that of the progenitors as well as that of her partner – on grounds of her being directly affected by decisions about the embryo.

Although interminable disagreement may justify bypassing the issue of the moral status of embryos in a pluralistic society, this rationale does not suffice as justification for the moral decisions of individuals whose different positions on this issue lead to different conclusions about their rights and responsibilities. Individuals involved in the process must therefore confront for themselves the question of the embryo's moral status and determine their individual rights and responsibilities with regard to one another on grounds of their reasoned and honest answer to this question. Only then can each of the affected moral agents act consistently with her

---

<sup>39</sup>M.B. Mahowald (2007). 'Prenatal testing for selection against disabilities,' *Cambridge Quarterly of Health Care Ethics* 16, 457–462. For well-developed arguments for and against prenatal testing to avoid having a child with disabilities, see E. Parens and A. Asch (Eds.) (2003). *Prenatal Testing and Disability Rights*. Washington, DC: Georgetown University Press. The expressivist argument that articulates the position of many people with disabilities on this issue is recapitulated on pp. 13–17.



own moral values and thus insure that she is subjectively moral – even if her answer is objectively wrong. This disappointing conclusion follows from the lack of definitive proof of the objective wrongness or rightness of different positions about the embryo's moral status.

## 7 How, Then Am I to Assess Embryo Adoption

The preceding sections were written from the perspective of someone whose academic background is that of a philosopher. No doubt, other aspects of my background infuse my teaching, writing, and personal decisions. Nonetheless, my usual goal in academic publications is to present and evaluate arguments that are philosophically defensible and, as such, accessible on grounds of their reasonableness to people with different backgrounds. While doing so, I try to avoid a flaw that I have observed in philosophical contributions to bioethics, i.e., tackling issues that have different impact on men and women as if this difference were not present. Avoidance of this flaw is essential to an egalitarian perspective which, as mentioned at the outset, is simultaneously and necessarily feminist.

Because this volume is explicitly devoted to exploration of the Catholic tradition with regard to embryo adoption, this section goes beyond the academic discipline in which I was trained and the remedial emphasis on women that I have brought to that arena. As I am neither a trained Catholic theologian nor an official spokesperson for the Roman Catholic Church, my views lack the authoritative status of these sources. Neither do I as a Catholic woman claim to speak for every Catholic woman; some women probably disagree with me for cogent and defensibly Catholic reasons. Accordingly, this section should only be interpreted as representing the views of one Catholic woman about embryo adoption. Some of my beliefs diverge from those that have been articulated by the Catholic hierarchy. In light of the fact that Catholic teachings on moral matters have changed through the centuries, it is possible that some official Catholic teachings may change in the future.<sup>40</sup> It is also possible, in fact probable, that my current understanding of my faith has changed somewhat from what it was when I was young.<sup>41</sup> With regard to both my

---

<sup>40</sup> This point was documented recently in the work of J.T. Noonan (2005). *A Church That Can and Cannot Change*. South Bend, IN: Notre Dame University Press. The practice and approval of slavery by church authorities is particularly salient in this regard.

<sup>41</sup> For a fuller account of my current views on the relationship between my faith, philosophy, and feminism, see M.B. Mahowald (2003). 'Feminism, socialism, and Christianity revisited,' in R.E. Groenhout and M. Bower (Eds.), *Philosophy, Feminism, and Faith* (pp. 40–59). Bloomington, IN: Indiana University Press.

Church and myself, however, I do not think there have been any changes in the core beliefs that make us Catholic.

That said, the Catholic Church has long had a definitive answer to the question of the moral status of the human embryo: It has the same moral status as that of a newborn, i.e., the same right to life, regardless of whether it is in vitro, in vivo, or frozen. Because neither newborns nor embryos are moral agents, they cannot satisfy a definition of personhood as requiring moral agency. Personhood, however, is definable in other ways,<sup>42</sup> and moral agency is not the only adequate criterion for attribution of moral status or a right to life. Even if personhood demands moral agency, it is possible to deny that embryos and newborns are persons while attributing to them moral status that entails a right to life. As a Catholic, I agree that human embryos have moral status and a right to life.

Whether the right to life is positive or negative, absolute or relative, it may be attributed to embryos and children as well as adults.<sup>43</sup> My understanding of Catholic teaching is that this right is negative and relative because it does not entail an obligation on the part of others to intervene to prolong life in all circumstances. In some cases, the right to life entails positive obligations on the part of certain individuals to prolong the life of another; those who assume these obligations usually have special relationships to those whose right to life deserves to be supported by their interventions. Parents, for example, have a positive obligation to provide for the welfare of their dependent children. And physicians are obliged to provide their patients with life-prolonging interventions if these are necessary to promote recovery and consistent with the patient's wishes.

Some Catholics have different interpretations of the right to life that attaches to moral status. They may believe, for example, that this right is inviolable in every human being, born or unborn; consistency then demands not only that they oppose termination of embryos but also capital punishment and any killing that is not intended to save other lives. Other Catholics believe that moral agents sometimes forfeit the right to life, or that prolonging the lives of individuals in certain circumstances is neither obligatory nor commendable. The latter position, with which I agree, is defended on grounds of obligations to individuals for whom the prolongation can only be secured through coercive and invasive or painful procedures; in such situations, a right to die may be affirmed as an actual right that takes precedence over the a priori right to life. As a Catholic I embrace a "culture of life" that opposes any deliberate ending of human life except to save my own or others' lives, while resisting the view that life must be prolonged at all costs.<sup>44</sup> Commitment to a

---

<sup>42</sup> Cf. M.B. Mahowald (1995c). 'Person,' in W.T. Reich (Ed.), *Encyclopedia of Bioethics* (pp. 1934–1941). New York: Macmillan.

<sup>43</sup> I have developed these distinctions in the context of the right to have a baby, but they are also applicable to embryos. Cf. M.B. Mahowald (1993). *Women and Children in Health Care* (pp. 93–97).

<sup>44</sup> The view that life must be prolonged at all costs is called "vitalism." This view is at odds with the belief of Catholics that life in this world is not an end in itself. The life we currently enjoy as God's gift is a period of time during which we move towards life after death through resurrection of the body and its reunification with the soul.

“culture of life” also means that we are morally obliged to nurture the human lives entrusted to us (Cf. Brakman, this volume).

The term “conception” is used in church documents instead of “fertilization” to define the point at which the embryo is formed by union of sperm and egg. As mentioned earlier, however, conception does not technically occur until the embryo is implanted in a woman’s uterus, and this takes place about a week after fertilization unless the transfer is delayed through freezing. If moral status begins at conception rather than fertilization, embryos that have not yet implanted do not yet have a right to life.<sup>45</sup> Nonetheless, Catholic doctrine holds that in vitro embryos have moral status when conception has, technically, not yet occurred and even though they have been brought into being through a process that the Church considers morally objectionable. The latter point is comparable to Catholic teaching about the moral status of children born out of wedlock: They have a right to life and nurturance independently of the moral wrongness of the act through which they were conceived.

The leadership of the Catholic Church has articulated specific positions about methods through which human embryos may or may not be brought into existence. In vitro fertilization, for example, is morally wrong because fertilization should only take place as it does in nature, through sexual intercourse between a man and woman. Another official teaching, that the man and woman should be married, is defended on grounds that the lifelong commitment of marriage is a sign of the total self-giving that their love entails, and this commitment is necessary to insure adequate care of potential offspring by parents of both sexes until their children are able to care for themselves.

A Catholic position that is broadly supported beyond the Catholic community is that adoption of children by married couples is morally laudable. I assume but am not certain that Catholic teaching permits adoption of children by single men or women if married couples are not available or willing to adopt those who need parental care. If neither married couples nor single adults are willing and able to parent children, adoption of children by same sex couples would probably still be opposed on grounds that such adoptions place the child in a morally objectionable environment, implicitly condoning a relationship between partners that, by Catholic doctrine, is morally wrong.<sup>46</sup> This last position, with which I disagree, is at odds with the more compelling need of some children for parenting.

Summarily, Catholic views regarding the rights of embryos and the praiseworthy practice of adoption seem to support embryo adoption by married couples on grounds that embryos need and deserve life-preserving care, but only if the woman is willing and able to gestate them. In light of the relative and negative status of the right to life

---

<sup>45</sup> This is the rationale by which Senator Orrin Hatch, who has long been a public opponent of abortion, defends his support for embryonic stem cell research.

<sup>46</sup> Cf. Congregation of the Doctrine of the Faith (2003). *Considerations regarding Proposals to Give Legal Recognition to Unions between Homosexual Persons*, no. 7.

of in vitro embryos, women may not morally be coerced to undergo the medical interventions necessary to become pregnant, but women do not have a positive right to terminate embryos that are already developing within them. In the latter case, the negative right of clinicians to refuse to perform an intervention that would end a woman's pregnancy takes precedence over the woman's positive right to obtain the intervention. See, for example, the description of the practices of the National Embryo Donation Center (NEDC) by Keenan in this volume. Those couples who embryo adopt through the Christian (though not explicitly Catholic)-based NEDC, sign a document stating that they will not abort if a pregnancy occurs (Keenan, this volume). If the woman's own life is at stake, however, termination of an established pregnancy is defensible on grounds of the woman's own right to life.<sup>47</sup>

Without rejecting the preceding Catholic tenets, Catholics may believe, as I do, that the moral responsibility to nurture dependent human lives supersedes concerns about possible complicity in lifestyles or relationships that do not fit the paradigm of parenting by married, loving, heterosexual couples who have children through the usual route of sexual intercourse. This rationale for permitting adoption of children by single individuals or same sex couples illustrates the distinction that is central to my understanding of a Catholic approach to other issues: The distinction between ideal or virtuous behavior and the actual behavior of individuals whose limitations prevent fulfillment of the ideal. In an ideal society, all children would be adequately nurtured by their biologically related, married parents, after being conceived through an act of love, gestated, and delivered by the woman without requiring medical assistance to bring them into being.

Obviously, we do not live in an ideal society. In the real world in which we live, some children are conceived and born to genetically related parents who are unwilling or unable to nurture them, and some women are able and willing to gestate embryos already formed from others' genetic material and give birth to children they are able and willing to parent. In such circumstances, the right to life of embryos can only be respected by supporting the desire of these women. As a Catholic, then, I believe that the right to life of an already formed embryo, when coupled with the willingness of the potential gestator to parent after birth, is more compelling than the right of the progenitors to dispose of the embryos in other ways. It is also more compelling than the right of either or both of the progenitors to object to the transfer. Although this may mean that either or both of the progenitors may become a genetic parent without having agreed to do so, it does not mean that either of them thus becomes a social parent, a role that carries considerably greater and longer-lasting responsibilities than those which the progenitors have already fulfilled.

---

<sup>47</sup>I chose the word "defensible" rather than "permissible" because this point is challengeable on grounds that a life "at stake" may actually survive, whereas termination of an established pregnancy ensures the demise of the embryo.

Catholics in general embrace the widely held belief that all persons, regardless of age or gender, have the same value. Just as there are different interpretations of personhood, however, Catholics may disagree about what “same value” means. Some apparently believe that the subordination of women to men, as recommended in Paul’s instruction to wives, is compatible with attribution of the same value to both sexes.<sup>48</sup> Along with many others, I believe the opposite, that the subordination of women to men is incompatible with recognition that all persons, while different, have the same value.

Catholics and non-Catholics alike believe that both women and men have an a priori right to determine what is done or not done through their bodies. Women who are capable of gestating and raising children, therefore, have an a priori right to undergo (or decline to undergo) the medical and surgical risks associated with embryo transfer so that they can become biological mothers through gestation of embryos formed from the gametes of those who are unwilling or unable to gestate them. In addition, I also argue that unmarried heterosexual couples and single women also have an a priori right to embryo adoption; this right is based not only on the embryo’s right to life but also on the scarcity of married heterosexual couples who are willing and able to adopt the hundreds of thousands of in vitro embryos that are available for adoption.

As we have seen, the fact that embryo adoption entails risks and burdens for women that it does not entail for men is unavoidably relevant to moral decisions about the practice. Different risks and burdens are faced by the potential mother and by the woman who provided the ova.<sup>49</sup> The moral onus entailed by recognition of this sex-based disparity is to attempt to reduce it. Obviously, the woman’s physical risks cannot be shared with her partner, but giving priority to her decision if this is at odds with that of her partner reduces the disparity between them by compensating the woman for her greater risk and burden. In accord with Catholic doctrine, however, the embryo’s right to life supersedes the right of the oovum provider to negate the right of a potential gestator to adopt the embryo and raise the child to whom she will in time give birth.

My personal appreciation of the importance of pregnancy to potential mothers is undoubtedly influenced by my own experiences of gestation and childbirth. As Margaret Olivia Little observes, the inseparable “entwinement” between a woman

---

<sup>48</sup> Cf. Ephesians 5:21.

<sup>49</sup> Reported risks include ovarian hyperstimulation syndrome, ovarian cancer, and high-order multiple gestation. Cf. T. Al-Shawaf, Z. Zosmer, M. Dirnfeld, & G. Grudzinkas (2005). ‘Safety of drugs used in assisted reproduction techniques,’ *Drug Safety*, 28(6): 513–528. For women who undergo ovarian hyperstimulation for treatment of their own infertility, the risks are generally outweighed by the potential benefit of providing them with a genetically related child. Because women are born with a limited number of ova, an additional risk for egg donors is that hyperstimulation may compromise their future fertility.

and her developing embryo is a tie that entails considerable psychological impact as well as immense and unsharable moral valence.<sup>50</sup> Consequently, many infertile women, unlike their partners, consider their inability to be pregnant and give birth, an even more significant loss than their inability to have a genetically related child.<sup>51</sup> If biological parenting is good for children as well as their parents, and this good can only be achieved through gestation but not genetics, embryo adoption provides a preferable route to parenthood than adoption after birth. In casuistic terms, the following, slightly revised form of maxims that justify adoption of children is thus applicable to embryo adoption:

All in vitro human embryos need and deserve gestation by women;<sup>52</sup>

Women capable of gestation may adopt in vitro embryos if the ovum donor is unable or unwilling to do so.

This formulation deliberately ignores the role of the men involved in the process, i.e., the sperm donor and, possibly, the partner of the potential gestator – because the principle of equality requires the decisions of the men involved to be subordinated to those of the women whose bodies are directly, invasively, and painfully affected by the process. The man's decisions are morally relevant to the woman's decisions, but cannot override her decisions because of this disparate impact. However, the morality of the decisions of either potential parent is still inseparable from determination of the moral status or right to life of the embryo. This leaves us with the possibility that someone may want to adopt an embryo but there is no woman who is willing and able to commit herself to an induced pregnancy and childrearing so as to enable the adoption. From a Catholic standpoint, this possibility is regrettable but inevitable, reminding us once more that we do not live in an ideal world but one in which neither the right to parent nor the right to life is an absolute or positive right. Both rights, while hugely significant, are relative and negative.<sup>53</sup>

---

<sup>50</sup>M.O. Little (1999). 'Abortion, intimacy, and the duty to gestate,' *Ethical Theory and Moral Practice*, 2: 295–312.

<sup>51</sup>Cf. A.J. Ravin et al. (1997) and J.G. Thornton et al. (1994). For an argument that critiques the (over) emphasis of biological ties to children, see S.V. Brakman & S.J. Scholz (Winter 2006). 'Adoption, ART, and a re-conception of the maternal body: Toward embodied maternity,' *Hypatia*, 21, 1: 54–73.

<sup>52</sup>Children already born have a more compelling right to nurturance than embryos because responsibility for the nurturance of children can and should be shared with others without the risks or rigors that gestation entails for an individual woman. From an egalitarian perspective, therefore, the care of children is obligatory, while gestating an embryo for another is supererogatory. In regard to the issue of gestation by women as opposed to artificial wombs, see Christopher Kaczor's chapter in this volume.

<sup>53</sup>I wish to thank the editors of this volume, Sarah-Vaughan Brakman and Darlene Weaver, for their very thoughtful, pertinent, and helpful feedback on an earlier version of this paper. Although I have tried to respond adequately to their suggestions and criticisms, I doubt that I have fulfilled their hopes in that regard.

## References

- Adoption.com. *Glossary* [Online]. Available: <http://glossary.adoption.com/adoption.html>.
- Al Sha waf, T., Zosmer, Z., Dirnfeld, M., & Grudzinskas, G. (2005). 'Safety of drugs used in assisted reproduction techniques,' *Drug Safety*, 28(6): 513–528.
- Brakman, S.V. (2007). 'Paradigms, practices and politics: Ethics and the language of human embryo transfer/donation/rescue/adoption,' in M.J. Cherry & A.S. Iltis (Eds.), *Pluralistic Casuistry: Moral Arguments, Economic Realities, and Political Theory, Essays in Honor of Baruch Brody* (pp. 191–210). Dordrecht, The Netherlands: Springer.
- Brakman, S.V. & Scholz, S.J. (Winter 2006). 'Adoption, ART, and a re-conception of the maternal body: Toward embodied maternity,' *Hypatia*, 21(1), 54–73.
- Brody, B.A. (2003). *Taking Issue: Pluralism and Casuistry in Bioethics*. Washington, DC: Georgetown University Press.
- Congregation of the Doctrine of the Faith (2003). *Considerations regarding proposals to give legal recognition to unions between homosexual persons*. [Online]. Available: [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_20030731\\_homosexual-unions\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20030731_homosexual-unions_en.html).
- Gilbert, S.F. (2000). *Developmental Biology*, 6th edition. Sunderland, MA: Sinauer Associates.
- Hoffman, D.I., Zellman, G.L., Fair, C.C. et al. (2003). 'Cryopreserved embryos in the United States and their availability for research,' *Fertility and Sterility*, 79, 1063–1069.
- Jonsen, A. & Toulmin, S. (1989). *The Abuse of Casuistry*. Berkeley, CA: University of California Press.
- Larsen, W.J. (1997). *Essentials of Human Embryology*. New York: Churchill Livingstone.
- Little, M.O. (1999). 'Abortion, intimacy, and the duty to gestate,' *Ethical Theory and Moral Practice*, 2, 295–312.
- Mahowald, M.B. (1993). *Women and Children in Health Care: An Unequal Majority*. New York: Oxford University Press.
- Mahowald, M.B. (1995a). 'As if there were fetuses without women: A remedial essay,' in J.C. Callahan (Ed.), *Reproduction Ethics and the Law* (pp. 199–218). Bloomington, IN: Indiana University Press.
- Mahowald, M.B. (1995b). 'The fetus: Ethical and philosophical issues,' in W.T. Reich (Ed.), *Encyclopedia of Bioethics*, Revised Edition (pp. 851–857). New York: Macmillan.
- Mahowald, M.B. (1995c). 'Person,' in W.T. Reich (Ed.), *Encyclopedia of Bioethics*, Revised Edition (pp. 1934–1941). New York: Macmillan.
- Mahowald, M.B. (2003). 'Feminism, Socialism, and Christianity revisited,' in R.E. Groenhout & M. Bower (Eds.), *Philosophy, Feminism, and Faith* (pp. 40–59). Bloomington, IN: Indiana University Press.
- Mahowald, M.B. (2006). *Bioethics and Women: Across the Life Span*. New York: Oxford University Press.
- Mahowald, M.B. (2007). 'Prenatal testing for selection against disabilities,' *Cambridge Quarterly of Health Care Ethics*, 16, 457–462.
- May, W.E. (2005). 'On "Rescuing" frozen embryos: Why the decision is moral,' *National Catholic Bioethics Quarterly*, 5, 1:51–57.
- National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research (1975). *Research on the Fetus* [Online]. Available: [http://bioethics.gov/reports/past\\_commissions/research\\_fetus.pdf](http://bioethics.gov/reports/past_commissions/research_fetus.pdf).
- Noonan, J.T. (2005). *A Church That Can and Cannot Change*. South Bend, IN: Notre Dame University Press.
- Parens, E. & Asch, A. (2003). *Prenatal Testing and Disability Rights*. Washington, DC: Georgetown University Press.
- President's Council on Bioethics (2004). *Monitoring Stem Cell Research* [Online]. Available: [http://www.bioethics.gov/topics/stemcells\\_index.html](http://www.bioethics.gov/topics/stemcells_index.html).
- Rapp, R. (2000). *Testing Women, Testing the Fetus*. New York: Routledge.

- Ravin, A.J., Mahowald, M.B., & Stocking, C.B. (1997). 'Genes or gestation? Attitudes of women and men about biologic ties to children,' *Journal of Women's Health*, 6, 639–647.
- Thornton, J.G., McNamara, H.M., & Montague, I.A. (1994). 'Would you rather be a 'birth' or a 'genetic' mother? If so, how much?' *Journal of Medical Ethics*, 20, 87–92.
- Tong, R. (1998). *Feminist Thought*. (2nd edition). Boulder, Colorado: Westview Press.



# A Protestant View: The Ethics of Embryo Adoption and the Catholic Tradition

Eric Gregory

*Who are my mother and my brothers? (Mark 3:33)*

## 1 Introduction

This paper offers a Protestant perspective on Roman Catholic debates regarding the moral permissibility of transferring and adopting genetically unrelated embryos that have been abandoned or designated for donation. The relative silence in Protestant bioethics on these issues stands in contrast to the vigor of Catholic discussions. This neglect is striking in light of both the significant role of mainline Protestants in supporting the practice of in vitro fertilization (IVF) which gave rise to such novel possibilities and the growing support of embryo adoption by evangelical Protestants (Berkman, 2002; Cooperman, 2005; Ennis, 2005; Saake, 2005). The essay affirms the inherent morality of both the transfer and adoption of abandoned embryos. But, it also expresses reservations about the current practice. For *theological* reasons, it encourages a critical attitude toward potentially vicious reasons for which it is promoted in our cultural context.<sup>1</sup>

Given the neglect of Protestant analysis and the characteristic diversity of Protestant reflection, I enlist themes from two influential twentieth-century theologians in order to achieve my aim of offering a distinctively Protestant contribution. In particular, I turn to H. Richard Niebuhr's theological appeal to "responsibility" and Karl Barth's eschatological discussion of marriage, parenthood, and children. Bringing together these often contrasted authors will serve as a route into defending the licitness of embryo transfer while calling into question embryo adoption as a social practice for the Christian community unless it is disciplined by Christian *agape* and does not contribute to an idolatry of the nuclear family. Embryo adoption

---

<sup>1</sup> I bracket a number of legal and administrative considerations that also call into question the morality of embryo adoption. See J. Berkman (2002). 'Adopting embryos in America: A case study and an ethical analysis,' *Scottish Journal of Theology*, 55, 438–460, and J. Mayoue (2005). 'Legal and ethical challenges of embryonic adoption,' in T. Jackson (Ed.), *The Morality of Adoption: Social-Psychological, Theological, and Legal Perspectives* (pp. 262–282). Grand Rapids, MI: Eerdmans.

raises a host of meta-ethical and theological issues that should not be neglected because of narrow attention to the permissibility of the act itself. These include familiar problems like the status of moral dilemmas and the prospect of genuine tragedy after the Fall (Santurri, 1987). But it also demands attention to the parental aspirations of the infertile. I argue that a theology of marriage and parenthood is the best matrix for evaluating embryo adoption.<sup>2</sup> Fully developing such a theology is beyond the scope of this paper. Nonetheless, I will suggest that a Protestant perspective offers a view of marriage which commends a readiness to extend hospitality to embryos, but also challenges Pelagian attitudes fostered by technological developments and merely cultural affirmation of “family values.”

The essay is a Protestant contribution simply in virtue of its effort to engage and to draw from the Catholic tradition in light of the Christian Gospel and the integral relationship between Christian ethics and dogmatic theology. It takes its cue from characteristic Protestant emphases on the sovereignty of God, the creaturely freedom of sinners justified by grace, and the witness of the new community of those gathered by the resurrected Christ. Such appeals, of course, are neither distinctively Protestant nor adequate to assemble *the* Protestant view. In general, however, these confessions cast up distinctive Protestant modes of thinking which can be contrasted with both Catholic moral theology and secular philosophy. Protestants, for example, tend to worry that a dominant focus on the external structure and intrinsic natural rightness of a moral act loses sight of the dynamic character of agents within a particular historical milieu and the total narrative of salvation history. As James Gustafson outlined these concerns some time ago, “casuistry depersonalizes; it makes every situation a ‘case’; it makes the norm a being in itself” (Gustafson, 1978, p. 48). Recent developments in both Protestant and Catholic ethics helpfully resist the overdrawn opposition of static Catholic casuistry and radical Protestant intuitionism (Black, 2001). In fact, many Protestant ethicists have turned to the Catholic tradition in their effort to move beyond secular options of utilitarianism and Kantianism. In a final section of the essay, I suggest a way in which the debate over embryo adoption offers an occasion for re-examining concerns with the supposed abstract formalism of Catholic moral theology which is thought to betray the explicitly religious and virtue-oriented dimensions of moral life.

## 2 The Questions

About 400,000–500,000 cryopreserved embryos exist in the USA and the number is growing fast. These embryos arise from documented practices that date at least back to the early 1980s with the successful transfers of a third-party fertilized

---

<sup>2</sup>Given its accent on love for strangers, contemporary Christian ethics suffers from a lack of theological attention to the ethics of familial relations. For a notable exception, see S. Post (1994). *Spheres of Love: Toward a New Ethics of the Family*. Dallas, TX: Southern Methodist University Press. Post argues that the “family should be a school of love where we learn to cultivate the solicitude that can embrace society and the children who are not our own” (Post, 1994, p. 6).

oocyte to a woman's uterus (Sauer, 1998; Michelmann & Nayudu, 2006). The Catholic Church has yet to issue a clear teaching on the practice of "rescuing" or "adopting" these embryos often slated for prolonged storage and eventual death. Is this a good act even if it is not a duty that *must* be done? Does it morally harm those embryos that have already been harmed? Should they be entrusted to God? Are they already "lost" (Outka, 2005)? *Donum Vitae* describes such embryos as "exposed to an absurd fate, with no possibility of their being offered safe means of survival which can be licitly pursued" (Congregation for the Doctrine of the Faith [CDF], 1987, I.5). This "absurd fate" has occasioned numerous opportunities for criticism of secular morality, calls for a ban on embryo production, and lament over what should not have been. Pandora's Box has been opened.

As this volume makes clear, however, the debate over embryo transfer and adoption divides those who otherwise share commitments to the Vatican's vision of a "culture of life" and Church teachings on marriage and sexuality. It is a rare *quaestio disputata* for the Catholic Church's position on human embryos. Are there alternatives to prolonged storage and eventual death? Debates in Catholic circles, to this point, have focused on the apparent conflict between the sanctity of the embryo and an integrated understanding of the unitive and procreative ends of marriage. Here the question might be put this way: is embryo adoption a praiseworthy act of compassion that is neither a "making" nor a "begetting" that violates Catholic teachings on surrogacy, gamete donation, in vitro fertilization, and other forms of assisted reproductive technologies (ART), as is argued in this volume by Brakman, Brown and Eberl, Tollefsen, and Weaver? Or is it illegitimate to pursue gestational parenthood even for so-called good reasons, given the primary goods of marriage, the nuptial significance of the body, and the Church's commitments to the vulnerable who already need support, as is argued by Stempsey, Althaus, and Pacholczyk in this volume?

Most Protestant ethicists affirm an integrated understanding of the unitive and procreative ends of marriage. As a Protestant reader of Augustine, however, I should note that such integration is never fully realized given the realistic limits of our sanctification in this life (Cavadini, 2005). Nonetheless, Protestants also share Catholic concerns with the increasing technologization, commodification, and instrumentalization of human reproduction. Like the Catholic Church, Protestant denominations have not issued statements regarding the moral permissibility of embryo adoption. So it is likely that Catholic discussions will have an impact on Protestant deliberations in the USA.<sup>3</sup>

Some Protestant leaders and organizations have embraced embryo adoption with enthusiasm. The most highly publicized American programs – Snowflake Embryo Adoption Program, The National Embryo Donation Center (whose founding director, Keenan, has a chapter in this volume), and Embryos Alive – have made targeted appeals to Christian communities, especially within evangelical circles where embryo laboratories often are described as "frozen orphanages" (Saake, 2005, p. 97). Embryo

---

<sup>3</sup>One commentator observes that if "Pope Benedict XVI rules against embryo adoption, as some doctrinal conservatives expect, it could create a fissure between Catholics and evangelical Protestants" (Cooperman, 2005, A1).

adoption has been promoted by evangelical groups like Focus on the Family, the Family Research Council, the Southern Baptist Ethics and Religious Liberty Commission, and the Christian Medical and Dental Association.<sup>4</sup> These groups praise embryo adoption as presumptively consistent with a pro-life position that respects the dignity of the unborn, including cryopreserved supernumerary embryos.

On May 24, 2005, President George W. Bush lauded the work of embryo adoption programs for ensuring “that our society’s most vulnerable members are protected and defended at every stage of life” (Bush, 2005, <http://www.whitehouse.gov/news/releases/2005/05/20050524-12.html>).<sup>5</sup> Bush’s dramatic posing with families of “Snowflake” babies, and the administration’s modest funding of the practice through Embryo Adoption/Donation Awareness Campaign Grants, has been characterized by critics as a “backdoor attack on abortion rights” (Weil, 2006, p. 35).<sup>6</sup> In fact, they argue that “the use of the word ‘adoption’ is one more attempt to confer humanhood on the embryo” (Mundy, 2006, p. 43). The problem, as a recent *Mother Jones* article noted, is that “many patients do view embryos as nascent human life and, paralyzed by this thought, cannot decide how to decide” the fate of their frozen embryos (Mundy, 2006, p. 43).<sup>7</sup> Disputes over embryo adoption, like some classic discussions of abortion, reveal that many “ethics of life” questions are not resolved even when the fully human status of embryos is granted (i.e., Thomson, 1971; see also Mahowald, this volume). For the purposes of this paper, I will stipulate that an embryo, suspended in liquid nitrogen, is both a human body and a human person from conception. I also stipulate that innocent human persons should never be intentionally and directly killed. Despite the connections made on both sides to abortion and embryonic stem cell research, one potential contribution

---

<sup>4</sup>The Christian Medical and Dental Association (CMDA) provides a link to the Tennessee based National Embryo Donation Center (NEDC). The CMDA states that “cryopreservation of embryos should be done with the sole intent of future transfer to the genetic mother.” The Association was instrumental in the creation of the NEDC. See [www.cmdawashington.org](http://www.cmdawashington.org) (visited September 10, 2006) and Keenan (2007) this volume. Some evangelicals do express consequentialist concerns that embryo adoption will “make irresponsible in vitro activity more likely” (Kennedy, 2000, p. 108).

<sup>5</sup>Bush told the assembled families, “the children here today remind us that there is no such thing as a spare embryo. Every embryo is unique and genetically complete, like every other human being. And each of us started our life this way. These lives are not raw material to be exploited, but gifts.”

<sup>6</sup>Weil cites the legal scholar Susan Crockin: “We’re starting to hear a lot of talking about embryo adoptions even though very few are actually happening. This way, in the public’s mind, you elevate embryos to fetuses, and fetuses to children, and then you can’t do things with embryos” (Weil, 2006, p. 36).

<sup>7</sup>Nachtigal et al. found that “the ambivalence about the disposition decision is that couples are initially focused on the immediate goal of achieving a pregnancy while working their way through the complex intermediate steps and decisions required by the IVF technique ... when couples finally entered the confrontation stage, often prompted by bills or reminders from the embryo storage facility, their initial reaction was frequently one of discomfort and uncertainty” (Nachtigal et al., 2005, p. 433). In light of this experience, Brakman argues that HET “is more analogous to traditional adoption ... than it is to any other ART procedure” (Brakman, 2007, p. 200). She proposes “embryo placement as the name for the practice of relinquishing embryos” (Brakman, 2007, p. 207).

of religious ethics is discrete attention to the ethical and religious implications of the practice on its own terms.

Catholic and Protestant moral traditions share an interest in the proper description of human action. This much seems true if one is to hazard a general thesis of comparison. Disagreements arise in assessing the normative relevance of description for guiding concrete action informed by reason, virtues, norms, scripture, and Church teachings. Description and analysis open the door to long-standing debates within both traditions regarding the intellect's relation to the will and the application of doctrine or principle to particular situations. Today's resurgence of virtue ethics has led to a denigration of act-analysis of difficult cases among many Protestant and some Catholic moralists. But, at a most basic level, conceptually determining the species of an act by its object plays a role in getting the project of an applied ethics off the ground.

Consider briefly two quite disparate examples. Thomas Aquinas and H. Richard Niebuhr both advance an approach to the virtuous employment of practical reason that highlights the importance of description for moral deliberation. For example, despite its critical stance toward deontology and teleology, Niebuhr's account of "fitting" responsibility "proceeds in every moment of decision and choice to inquire: what is going on?" (Niebuhr, 1961, p. 60). From this perspective, moral agents dialogically understand themselves as "responsive beings, who in all our actions answer to action upon us in accordance with our interpretation of such action" (Niebuhr, 1961, p. 57). Niebuhr's elevation of responsibility corresponds with a traditionally Protestant emphasis on discerning a free obedience to one's vocation in light of neighbor-love and God's call to holiness in union with Christ.

The concept of responsibility was employed by twentieth-century ethicists in order to address moral questions brought about by technological developments. Right action in these cases was thought to be underdetermined by traditional norms and demanded tragic choices between goods in apparent conflict with one another. Catholic critics might suspect a lurking subjectivism or intuitionism that travels with many modern appeals to responsibility. Appeal to responsibility is often taken to signify a rejection of traditional authority (McKenny, 2005, p. 237).<sup>8</sup> But the theme of responsibility has been developed in multiple directions that avoid charges of anti-realism and individualism (O'Donovan, 1986; Schweiker, 1995).

Aquinas' virtue-oriented analysis of human acts is more well-known, influential, and developed than Niebuhr's appeal to responsibility. It is a keystone of Catholic moral theology that can be pursued with rigor and clarity by following a schema of discrete questions which bear upon moral evaluation: who, what, where, when, how, by what means, under what circumstances, and with what consequences. The structure of Aquinas' account and its scholastic legacy are hotly contested, but it is safe to see in this Aristotelian analysis the roots of a Catholic casuistry that has exercised massive influence in applied ethics. Aquinas launched a longstanding

---

<sup>8</sup> McKenny offers a helpful history of the development of responsibility in Christian and secular ethics. He argues that "the appeal to responsibility, and the role it has come to play, indicates an intensification and expansion of what is up to us" (McKenny, 2005, p. 237).

practice of evaluating moral acts in light of classifiable moral species (i.e., a violation of justice). This influence extends to both Protestant and secular moral traditions, especially in the field of bioethics.

This paper argues, however, that the scope of Niebuhr's potentially vague question ("what's going on?") allows for a richer *theological* inquiry than more conventional casuistry that fixes only upon the immediate features of a case of conscience. This breadth, while not opposed to the formality of act-analysis, is particularly welcome in the face of new technologies and cultural contexts that give rise to moral situations like heterologous embryo transfer (HET) and embryo adoption. At the same time, my Protestant contribution hopes to invite fuller elaboration of concepts familiar to Catholic moral theology. I begin with some comments on the state of the Catholic debate. I then argue that Niebuhr's concept of responsibility can be helpfully supplemented by Karl Barth's theological discussion of parents and children in order to outline an initial Protestant perspective.

### 3 The Catholic Tradition and Embryo Adoption

The most obvious Protestant observation in assessing the Catholic debate might focus on the importance attached by the Church to the marital act's intrinsically ordered relation to procreation. Both Protestant and Catholic moralists affirm the complex relation of the goods of marital sex. But they traditionally divide between the official Catholic view that each individual marital act of sexual intercourse must remain open to the gift of children and a Protestant view that the unitive and procreative goods of marriage should characterize the *overall* course of a marital relationship (or, in some authors, the species as a whole). This well-known division, which necessarily involves the status of the procreative purposes of sex, may prove important for assessing whether or not embryo transfer is itself permissible.<sup>9</sup>

Two distinct issues seem to preoccupy contemporary Catholic discussions. Both involve competing accounts of what constitutes proper description. Oliver O'Donovan (2005, p. 259) accurately describes this situation as "a position too familiar to technological society, that of having achieved something that we do not know how to describe responsibly." First, some Catholics maintain that, despite a possible right intention, embryo transfer is illicit because it is a freely chosen impregnation outside of the marital act (Althaus, this volume). It is, as such, a *malum in se* because it violates the goods of marriage in generating human life by means other than properly ordered sexual activity between a married man and woman. Second, critics also hold that such transfer "shares in the evil of in vitro fertilization, although the latter is more egregious in that it is a more primary evil" (de Rosa, 2005, p. 60; Cf. Pachelczyk, this volume). I return in a final section to this argument from cooperation with evil. I here focus on the first claim in terms of the relevance of the already conceived embryo.

---

<sup>9</sup>The Church's approval of limiting intercourse to a woman's infertile period has long caused notable questions from Protestant circles (Bainton, 1957; Jenson, 2005; Murray, 2004).

The current state of the Catholic debate would seem to make the issue of embryo transfer a non-starter for those Protestants who reject a Catholic view which renders illicit *anything* that purposely separates procreation and pregnancy from natural acts of marital unity. But this possibility is only apparent. First, not all Protestants adopt this view. Protestants, of course, are not bound by magisterial teachings. More importantly, however, the Catholic debates focus precisely on interpreting magisterial teachings in light of contested relations among pregnancy, procreation, and conjugal acts. In fact, the question of embryo transfer has opened the door for Catholic moral theology to affirm a possible distinction between a genetic mother and a gestational mother without denial of the spousal–parental love relationship. Catholic critics of embryo transfer worry this affirmation would unravel the consistency of Catholic teaching on sexuality and marriage.

As Christopher Tollefsen, Brandon Brown and Jason Eberl, and Christopher Kaczor all argue in this volume, however, embryo transfer may not be accurately described as either surrogacy or procreation. First, in terms of surrogacy, transfer is undertaken *for the sake of* the already existing embryo. Biological parents may welcome this transfer, as in the case in the small percentage of embryos earmarked for donation. But, strictly speaking, the transfer is not directly for their benefit. The gestational mother need not *intend* that the embryo had been conceived in the first place. Second, the impregnation of the gestational mother, it is claimed, differs in kind from the generation brought about by conjugal acts of marital unity. Critics argue that this difference is what jeopardizes the unique bonds of marriage and parenthood. Embryo transfer, like IVF itself, is not a *procreative* act. It artificially imitates procreation in ways that undermine the integrity of procreative powers. Tadeusz Pacholczyk (this volume, p. 72) writes that it “involves an alternative kind of action from procreation, as the powers of procreation are partially engaged to achieve the pregnant state, apart from the concrete acts of marital intimacy which need to serve as the necessary precondition to that state.” But, for its defenders, this difference also serves to distinguish embryo transfer from IVF or artificial insemination.

By my lights, and with due caution as an outsider who may be tone deaf to the subtleties of Catholic development of doctrine, a viable consensus could emerge from the notion that the *proximate* object of the act is simply the transfer of an unborn human being into a womb. The only means available to achieve the object of the act is – for now – uterine nurture.<sup>10</sup> While problematic given that the act itself reveals a *strict intention* of impregnation, one could even loosely venture that the

---

<sup>10</sup> An early statement of this view can be found in G. Grisez (1997). *The Way of the Lord Jesus, Vol. 3: Difficult Moral Questions* (pp. 240–242). Quincy, IL: Franciscan Press. The prospect of artificial wombs raises a further issue of whether or not their use would constitute a violation of human dignity. In principle, I agree with Christopher Kaczor’s argument in this volume that an artificial womb “is no more ominous than highly advanced versions of the neo-natal intensive care units widely used today to save the lives of thousands of premature infants” (Kaczor, this volume, p. 321). But, even apart from justice questions regarding distribution of scarce resources, it is a separate question whether such analogies should extend to complete ectogenesis given its likely potential for physical, social, and psychological harms. I agree with Kaczor that complete ectogenesis could not be defended in general and also that more work needs to be done to determine its permissibility in the case of frozen embryos.

pregnancy is a foreseen but unintended consequence of the justified emergency situation of embryo transfer. It is not a classic case of double effect, but the diverse possible motives in question suggest different moral evaluations. Further questions do arise if the gestational mother elects not to be the adopted mother, especially given the potential harms to the child or in the case of unmarried women (Williams, 2005). Indeed, could members of a religious order, for example, consider embryo adoption as part of their vocation and witness, offering the shelter of their wombs in the service of the church (Demartis, 1998)? At this point in the debate, however, the crucial claim involves a belief by many that the gestational mother is not “made pregnant” by an immoral act indicative of a disordering of marital morality through non-marital-act conception. On this view, the separation of procreation and the unitive marital act is not at issue. The embryo may have been conceived by a defective conjugal act, but this defect is not a contagion that infects the process of embryo transfer, as Brown and Eberl’s (this volume) discussion of cooperation and complicity discussed in this book demonstrate. Embryo adoption is best understood here as an act of nurture rather than procreation.

Transfer is not like an act of taking another’s gametes into an act of procreation. Tollefsen argues, for example, that “when the woman accepts an embryo into her womb via embryo transfer, she does not imitate her part in the marriage act (nor does the clinician imitate the part of the man)” (this volume, p. 97). Procreation or conception *precedes* transfer if Catholic understandings of the full humanity of the embryo are to be kept coherent. They are conceptually distinct activities that do not invite parallel moral judgments. Similarly, because procreation is not involved, William E. May argues that such a pregnancy is “not the result of an immoral act of generating human life whether by fornication, adultery, or the use of new reproductive technologies” (May, 2005, p. 52).<sup>11</sup> Indeed, he writes, “no marital act is involved in the ‘rescue’ attempt” (May, 2005, p. 55). John Berkman (2003, p. 319) concludes that Catholic critics of embryo transfer must go to “extraordinary lengths to show that the choice to gestate an embryo is not a form of nurturing, but rather a kind of ‘conception’.” HET, on this emerging view, simply does not involve activities that in themselves immediately threaten or violate traditional Catholic norms governing procreation or marital fidelity.

A Protestant observer to the Catholic debate will be sympathetic to the fundamental concerns that have arisen regarding the “artificiality” of embryo transfer and adoption. Leading Protestant thinkers, such as Jacques Ellul, Paul Ramsey, Oliver O’Donovan, and Gilbert Meilaender, have highlighted one such general concern that is shared by both traditions and applicable to the emerging debate. In various writings, they each have expressed concern about the ways in which reproductive technologies have the potential to radically change human self-understanding by mechanizing procreation.

---

<sup>11</sup> According to May, “the child has already been generated in a way that violates his or her dignity but the woman in no way collaborated in its immoral mode of generation” (May, 2005, p. 53). For similar views, see K. Schudt (2005). ‘What is chosen in the act of embryo adoption?’ *The National Catholic Bioethics Quarterly*, 1, 63–67, and E.C. Brugger (2005). ‘In defense of transferring heterologous embryos,’ *The National Catholic Bioethics Quarterly*, 1, 95–112.



These changes transform not simply the ways in which human beings do things, but also the ways in which human beings *think and desire* (Ramsey, 1970). In particular, a technological culture perpetuates attitudes of instrumental manipulation that can degrade human relations, such as parenting, into projects to be achieved. As O'Donovan (1984, p. v) states in his influential study of IVF, there is a distinction between "the use of technique to assist human procreation and the transformation of human procreation into a technical operation." Meilaender (2001, p. 45) fears that reproductive technologies of any kind seduce us into seeing "the child not as blessing but as product."<sup>12</sup> HET and embryo adoption may encourage such views even if they are not properly described as conception or "making pregnant."

Sweeping claims against the technological imperative, however, will not do. A virtue of the Catholic tradition, it seems to me, is its creative capacity to make relevant distinctions for an ethics in this world after the Fall. The imaginative work of the Just War tradition is a remarkable example of this capacity. I suspect that issues in bioethics will increasingly demand this sort of moral reasoning. William Schweiker has helpfully identified the problem. He writes, "the radical extension of human power in our time threatens to overwhelm moral reason, making all moral reflection instrumental to the simple purpose of furthering human power" (Schweiker, 1995, p. 27). Of course, a perennial temptation remains: assuming it is our responsibility to make history turn out right in the aftermath of sin. Nevertheless, decisions must be made "in reliance of God's for giving grace" (Barth, 1961, p. 275). If, as argued above, embryo transfer does not turn procreation into a technical operation, then the practice of embryo adoption may avoid these concerns expressed by Catholics and Protestants alike. In fact, at a sociological level, the practice may serve as a counter to the acceleration of the use of technique. This is a matter of prudential judgment. I am sympathetic to those arguments which highlight the disparities between transfer and conception. Nevertheless, like Darlene Weaver indicates (this volume), I worry that the sort of analysis that preoccupies contemporary Catholic approaches can not serve as an adequate description necessary for moral evaluation. The terms of the debate themselves mask a host of relevant questions, as Paul Lauritzen's chapter in this volume incisively demonstrates. The second half of my essay gives content to this worry from an informed Protestant perspective.

#### 4 What is Going on? A Broader Conception

Karl Barth and H. Richard Niebuhr have a vexed relationship with applied ethics. They exercise tremendous influence on contemporary Protestant moral theology and social ethics. Their own writings, however, do not exhibit the sort of casuistry that characterizes contemporary bioethics. This absence, rightly or wrongly, reflects

---

<sup>12</sup> According to Meilaender (2001, p. 46), "to the degree that we encourage technological interventions that invite us to think of children as products, we immerse ourselves in practices that teach us to think of reproduction as a kind of making."

their suspicion of ethical systems that suggest morality can be governed by theories that function as decision machines. How might they be employed in this case?

Niebuhr's ethics of responsibility centrally involves the contextual notion that human beings exist morally within historical and dynamic relation to the triune God *and* an expansive community of others. The promise and limits of Niebuhr's ethical theory have been examined elsewhere (Schweiker, 1995; Werpehowski, 2002). For my purposes, I want to suggest that Niebuhr does make description a central element of moral evaluation in a world of diverse goods. But, for Niebuhr, the integrity of this description involves more than the determination of the object of an act or obedience to law. Rather, human freedom takes "place in response to actions over which we have no power, in which our free acts are not truly *ours*, and free, unless they are consequences of interpretation" (Niebuhr, 1963, p. 173). Description presupposes that "the social self exists in responses neither to atomic other beings nor to a generalized other or impartial spectator but to others who as Thou's are members of a group" (Niebuhr, 1963, p. 78). In relation to these selves and through a confident faith in God's providence, the responsible self does not invoke a utilitarian calculus but seeks to "interpret the signs of the times" as a fitting response to divine action (Niebuhr, 1963, p. 67). The responsible self considers a network of responsibilities, including to one's own self, in concert with all relationships.

Niebuhr did not enrich his formal account of responsibility by recourse to classical virtue concepts or an integrated ethics of motives. But it does not contradict the spirit of his claims to suggest this possibility. He writes, "sin is not quite so much lawbreaking as vice; it is the perverse direction of the drives in man, or of his will in general, towards ends not proper to him" (Niebuhr, 1963, p. 131). His ethical view is agent-oriented, but Niebuhr certainly tries to respect human freedom without endorsing "the ethics of man as conqueror of the conditions in which he lives, the ethics of human mastery" (Niebuhr, 1963, p. 173). Such an ethic, as with the Catholic tradition, refuses a binary approach to divine and human action which pits them against one another. It also suggests that moral realism does not vitiate genuine human responsibility: "God is acting in all actions upon you. So respond to all actions upon you as to respond to his action" (Niebuhr, 1963, p. 126). What confronts the responsible self in embryo adoption? What are the "signs of the times"? What virtues are necessary to respond to them?

Protestant and Catholic moral traditions affirm that adoption is a good and charitable act. They emphasize that the glad welcome of children is a distinctive aspect of the life and ministry of Jesus Christ. It is through Christ's death and resurrection that Christians call themselves *adopted* heirs of God's promised One through baptism. His followers are called to share in this generous hospitality and delight, a call which can be extended to frozen embryos. Of course, attitudes towards children have varied significantly throughout the history of all Christian traditions (Bunge, 2001). The diverse expression of the social institution of the family even within the Christian tradition both reflects and generates these attitudes. One preliminary account of responsibility would be to resist the stigmatization that contemporary culture (and much of Christian theology) can suggest in its attitudes toward adoptive parental-child relationships. This move, however, requires more work in developing a

*theology* of parenthood that can provide a richer framework for ethical discussion of how children come to be.

Family is an earthly good in need of defense in cultures preoccupied with economic production, consumerism, and utilitarian calculation. Children can be seen as an interruption to the market economy and a serious threat to middle-class living. The willingness to have children is a witness to faith in God's providence. At the same time, however, many cultural and media practices unduly valorize parenting as an icon of both what it means to be a "real" adult man and a "real" adult woman. The massive fertility market subtly manufactures and satisfies these desires. The right to children is taken to be a right constituted as an end in itself (Sparrow, 2006; Stein, 2007). While Christians often protest the advent of "designer babies" and "genetic consumers," these cultural attitudes tempt many Christian affirmations of family. Childless couples and singles are often made to feel as second-class citizens or even victims of God's disfavor. The desperate efforts of infertile Christian couples demands pastoral and theological reflection.

Lisa Sowle Cahill (2001, p. 31) has called Christian ethicists to "connect sexual ethics to social ethics by scrutinizing carefully the assumptions, values, interests, and rewards that motivate the development and use of the fertility industry in wealthy, rights-oriented, market-based, technology-trusting societies like the United States." Contemporary cultures, she writes, "manipulate desperation (especially among women) for fulfillment through biological children in order to market expensive and relatively ineffective interventions to those who can afford them or are appropriately insured" (Cahill, 2001, p. 32). It is commonplace to suggest that these resources should be devoted to care of the many existing children who are in need of loving families (Petersen, 2002). Questions of priorities and allocation of scarce communal resources remain salient given Christian teachings on stewardship (Stempsey, this volume). Even if the embryo is recognized as having the same moral status as existing parentless children, Christian communities and families must still carefully consider the methods and motivations behind embryo adoption in light of the common good. Any serious discussion of embryo adoption, for example, must include theological criticism of what has been called the "sentimentalist captivity of the modern Church" (Mangina, 2004, p. 469). This captivity places too much weight on the family by elevating its status with excessive romantic and moral significance as the primary and paradigmatic social order. American Protestants have a long history of valuing the family unit, even to the point of valorization (Morgan, 1944). This legacy is not without danger, especially when combined with Victorian sensibilities of the modern privatized family as a "haven in a heartless world."<sup>13</sup> As Stanley Hauerwas (1985, p. 278) prophetically writes, "the first family of every Christian is not what we call the 'biological' family, but the church." The plight of infertile couples is surely not to be dismissed out of hand. It is a natural desire, but one liable to disorder if not taken

---

<sup>13</sup> See R. Clapp (1993). *Families at the Crossroad: Beyond Traditional and Modern Options*. Downers Grove, IL: InterVarsity Press.

up before God. Having children can be a sign of faith and hope in God's providence. It can be a school of virtue, even a parable for the family of God. But it can also allow selfishness to be "transmuted into more virulent forms as my children become a moral legitimation for me to ignore the claims of others in my life" (Hauerwas, 1985, p. 273). Given this possibility, is embryo adoption properly described as an effort to assist "infertile couples who desire to experience the joy of pregnancy and childbirth" (Kennan, this volume)?

In an editorial in the leading evangelical magazine in America, Thomas Kennedy (2000, p. 109) helpfully asks, "At what point is it not just unwise but inappropriate for Christians to invest great fortunes in pursuit of a child?" Kennedy counsels that "the church may find it difficult to teach the virtue of contentment in the face of the good and powerful desire to be a parent, especially in a social context in which the desires of the individual trump all other concerns. Contentment is, nevertheless, a fundamental Christian virtue" (Kennedy, 2000, p. 109). Is there a sense in which contemporary culture leads infertile couples to find their justification in procreation rather than in faith? What might Karl Barth contribute to a Protestant perspective that does not reduce embryo adoption to another form of assisted reproductive technology?

Like Niebuhr, Barth emphasizes responsibility in light of creaturely freedom constrained by the Holy Spirit. His strong Protestant emphasis on the sovereignty of God and the promise of God's kingdom also serve to chasten cultural expectations that are potentially idolatrous. These background beliefs shape his views on both marriage and parenthood. Protestantism is usually given credit for its "recovery of marriage and care of the family as a concrete Christian vocation" (Wheeler, 2005, p. 352). Karl Barth stands within this tradition. But he stands to one extreme of the spectrum that offers a challenge to the Christian community which is salient for the embryo adoption debate.

Barth's discussion of marriage sets the stage for his discussion of parenthood. He certainly affirms marriage as a theological vocation based in discipleship to Jesus Christ, but as for many Protestants, he holds that marriage is not a sacrament. Barth suggests that Catholic teaching on marriage, articulated by celibate men, is troubled by "the dark shadow of dualism" (Barth, 1961, p. 124). Its problematic history oscillates between too romantic a view of marriage (a view he identifies with some nineteenth-century Protestants) and too low a view of marriage that arises from its oft-denied privileging of the spiritual against the physical. Barth (1961, p. 124) claimed that "for all the sacramental character attributed to marriage, the whole sphere of male-female relationship, including marriage, is limited and in some sense menaced by the theory of the higher perfection of the celibate life of monks and priests." He sought to honor marriage within its rightful place in salvation history. Unlike many Protestant theological traditions, however, Barth did not consider marriage to be an "order of creation," a concept which relies on Lutheran affirmations of realms of common human life that are divinely sanctioned but relatively autonomous in virtue of their created status apart from redemption. He consciously rejected this view in order to highlight the eschatological significance of the new covenant and its radical transformation of human fellowship. Barth worried that

marriage was unduly elevated “into something metaphysical and absolute” in both Protestant and Catholic traditions (Barth, 1961, pp. 124–125). To be sure, for Barth, marriage is neither excluded nor forbidden. He controversially allows that the relationship between the male and the female is the only relationship that rests “on a structural and functional distinction” rather than a “mere variation upon a theme common to both – a neutral and abstract humanity which exists and can be considered independently” (Barth, 1961, p. 117). This strong affirmation of gender and sexual complementarity, however, does not issue in an expected celebration of marriage.

For Barth, the coming of the Messiah and the promise of the kingdom means that marriage “is relativized and called in question” (Barth, 1961, p. 148). Barth is not here proclaiming a gnostic rejection of embodiment or natural passions. Marriage is neither subordinated nor devalued. Whatever Protestants might affirm about nature and grace, marriage is not an appropriate context where one speaks of grace destroying sinful nature. Barth affirms marriage as a vocation that “must have its status, necessity and dignity” (Barth, 1961, p. 143). This is not anti-family theology that destroys the ethics of creation. Nevertheless, marriage is a provisional sign of the kingdom which holds yet more promise of transformation and delight. He writes of marriage:

[N]ow that its prototype – Christ and the community – has emerged as a historical reality, it can and must receive a new consecration, not so much as an institution of procreation, but rather as a representation of fellow-humanity, and therefore of man’s determination as covenant-partner of God, in the perfect fellowship of man and women. Yet it is only one possibility which might be exploited, only one way which might be taken. (Barth, 1961, p. 143)

Marriage, then, is not presumptively endorsed as a Christian good. Barth’s rhetoric and theological positions regarding the “family” can be even more shocking within our contemporary context.

He provocatively claims that “the idea of the family is of no interest at all for Christian theology” (Barth, 1961, p. 241). This is no mere theological tip of the hat to the hard sayings of scripture. It flows from the complete eschatological and Christological orientation of his theology. The coming of Jesus Christ foreshadows the end of human history and “therefore of the child-parent relationship” (Barth, 1961, p. 260). The main intent of Barth’s claim is to highlight the tension between the ties and claims of this age with the kingdom and its consummation. These commitments are no longer governed by their own logic in this passing world. Barth (1961, p. 266) recognizes that “parenthood is one of the more palpable illuminations and joys of life.” The child–parent relationship is occasion for wonder and awe. Childlessness can be experienced as a “lack, a gap in the circle of what nature obviously intends for man, the absence of an important, desirable and hoped for good” (Barth, 1961, p. 265). But Barth argues that Christian theology must say more than this.

He warns against any account of marriage that judges its fruitfulness in physical terms: “the lament of the childless which is audible through the Old Testament can have no justification in the community of the new covenant” (Barth, 1961, p. 266). While there is rhetorical excess in Barth’s discussion, his theology means to offer a consolation for those anxious about progeny. For Barth (1961, p. 266), “the Child who alone matters for them has been born for them too” (Barth, 1961, p. 267), and

“the Son on whose birth alone everything seriously and ultimately depended has now been born and has now become our Brother” (Barth, 1961, p. 266). In typical Protestant fashion, this declaration of our justification leads to a call for grateful service to others. Barth (1961, p. 267) argues “childlessness can be a release and therefore a chance which those concerned ought to seize and exploit instead of merely grieving about it.” To be sure, Barth (1961, p. 268) recognizes that “where the great message of divine comfort is not known and believed, such suggestions will be scorned as an offering of stones for bread.” This calling into question the desire to have children is not a rejection of natural desire. It does, however, offer a critical theological mode for exposing the Pelagian temptations of fertility treatments which promote personal fulfillment and individual flourishing through parenthood.

A wide gulf exists between Barth’s views on marriage and parenthood and traditional Catholic teachings. The Catholic Church has done much to affirm the value of family in a modern world that threatens its significance (Hauerwas & Bennett, 2005). Protestants have much to learn from Catholic approaches to family, even within the rubric of grace perfecting nature. This affirmation of family, however, also demands a theological response to the pernicious cultural influence on lay Catholic attitudes toward the family. Two examples need suffice. First, women are often encouraged to view sacrificial care for others as their unique calling in ways that identify motherhood and virtue to the neglect of their own development (Andolsen, 1981). Second, from the other side of the spectrum, the celebration of the family can betray the temptation to view children as merely one more commodity in a consumer society driven by self-fulfillment and achievement apart from the triune God. Children too often become possessions to which one is entitled. The emphasis on structural and institutional practices in the Church’s social teaching might be supplemented by explicit attention to familial practices and their wider relation to the concerns of justice and to an ecclesial life where child-rearing is not limited to natural parents but is a corporate responsibility of the church. A statement on embryo adoption in light of the Church’s stewardship of creation and the message of the Gospels provides a possible occasion for this attention. One further remark in passing: regardless of the position taken, such a statement might also address liturgical practices and theological issues that relate to embryo adoption and the coherence of Catholic teachings on the unborn. Should embryos be baptized? Should there be a standard requiem or a mass of mercy for the unbaptized embryos to be thawed? Is the personal identity of a frozen embryo also secured by the hope of the resurrection?

## 5 A Final Consideration: Appropriation of Evil

In my review of the Catholic tradition, I stated that two questions preoccupy contemporary Catholic discussions of embryo transfer and adoption. I focused on what I take to be the primary concerns about HET as *malum in se*. A secondary concern is also a related one. Critics of both transfer and adoption claim that these practices

are marked by complicity with evil, or what is traditionally called “cooperation with evil.” These acts commit even conscientious couples to a sinful participation in the IVF industry and a sharing in the wrongful intention of IVF couples. If the wrong has already been done, however, then formal cooperation seems moot as the ethics of their creation is separate from the ethics of their use.<sup>14</sup> Nevertheless, another category may be illuminating.

In a suggestive article, M. Cathleen Kaveny proposes that cooperation with evil does not adequately capture the salient moral dimensions of many potentially sinful acts. A more developed analytic framework is needed to conceptually take account of these acts. As such, Kaveny distinguishes “cooperation with evil” and “appropriation of evil.” Cooperation problems are “posed by an agent whose action (or its fruits or byproducts) will be taken up and incorporated into the morally objectionable plans of another agent” (Kaveny, 2000, p. 281). As a category, cooperation involves those acts which *facilitate* someone else’s morally objectionable activity. Appropriation problems, by contrast, are “posed by an agent considering whether or not to take up and incorporate the fruits or byproducts of someone else’s illicit action into his or her own activity” (Kaveny, 2000, p. 281). As a category, then, appropriation involves those acts which “take advantage of the fruits or byproducts of someone else’s wrongful acts in order to facilitate *their own morally worthwhile activity*” (Kaveny, 2000, p. 286, emphasis added). The question of appropriation, Kaveny avers, deepens the insight of virtue ethics with its attention to the ways in which an agent’s actions shape his or her character. The category resists the externalist tendencies of act-analysis which solicit Protestant concern and emphasize the “physical structure and causal consequences” of human action (Kaveny, 2000, p. 288). Appropriation highlights the internal relationship between act and character by casting a light on the potential link between a prior evil act and one’s use of its fruit. Kaveny’s proposal hopes to reintegrate “the Catholic casuistical tradition with the intention-based, virtue-oriented Thomistic moral anthropology that was its most important progenitor” (Kaveny, 2000, p. 313). Embryo adoption is a viable candidate for a case of appropriation.

The embryo, of course, is not evil. But, on a traditional Catholic view, it is the fruit of a disordered and unjust act. The decision to adopt is a decision confronted after the (sinful) act has been committed. As such, the moral question is whether the adopting agent or agents can accept the contribution of the embryo. In this light, it appears the intention of the gestational mother can radically alter the extent to which a Catholic would affirm embryo adoption. The relevant questions to pose are not simply about the status of the embryo or the character of transfer. Rather, they also involve the impact of certain practices on the agent. Does the gestational mother *intend* that the embryo be conceived? Does she allow her desire for a child to invade her character in such a way that she hopes for a *donated* embryo? The description of the act itself does not provide sufficient information. One possibility, given this logic, would be to encourage the use only of *abandoned* embryos.

---

<sup>14</sup> See for an extensive discussion of these issues, B.P. Brown & J.T. Eberl (this volume).

The use of abandoned embryos, admittedly the vast majority in storage, places a little more conceptual distance between the illicit intentional act and the adoption as a means of protecting against possible self-deception.

This position, even if only a symbolic one, may prove a way to recognize both the agapic aims of many advocates and to address the plausible concerns of critics regarding scandal and the encouragement of wrongdoing by accepting its benefits. It honors the hope that embryo adoption would be an act of hospitality and not simply a treatment for infertility. John Berkman rightly problematizes the issue by pointing out that most cases of embryo transfer, which typically involve the hopes and aspirations of parenthood, are not adequately characterized as a form of “rescue.” He argues that “there is altruism involved in parenting, but the parental relationship is far too complex to be aptly described as ‘altruistic’” (Berkman, 2003, p. 324, n. 43). It may seem “odd” to refer to the decision to become a parent as altruistic, but it is important – both morally and theologically – not to lose sight of the charitable dimension of adoption.<sup>15</sup> Of course, this proposal appeals only to those who endorse embryo adoption.

## 6 Conclusion

Contemporary theology is pursued as an ecumenical practice. Vatican II traditionally stands as the symbolic event marking this reality for both Catholics and Protestants. *The Joint Declaration on the Doctrine of Justification*, reached between the Catholic Church and the Lutheran World Federation in the late 1990s, is its most dramatic ecclesial expression on a major church-dividing issue. Catholic and Protestant theologians are learning to listen and to speak in ways that do not deny differences but overcome the legacy of unfortunate obstacles caused by misunderstanding and misreading. The theological developments upon which this declaration and other ecumenical statements draw may prove to be the most significant twentieth-century legacy for Protestant–Catholic relations. Serious theological issues remain, but longstanding debates over issues such as the interpretation of scripture, the relation of nature and grace, and doctrines of God and salvation have been revisited and restated in ways that promise even further ecumenical developments. They reflect an even more radically ecumenical climate than the heyday of post-Vatican II enthusiasm. Scholarly presses regularly publish articles and monographs that engage major figures of Protestant and Catholic theology in

---

<sup>15</sup>Oliver O’Donovan (1984, p. 37) reminds us that “it may be too easily forgotten, in an age when everybody’s sympathies are claimed by the plight of couples who ‘want’ children and cannot have them, that in the act of adoption – however true it may be that it meets a ‘want’ in the adopting couple, however true it may be that they are richly satisfied by their love for their child – there is an element which can only be described adequately as charity.”



mutual dialogue on fundamental topics in theology proper. Some of these developments within Protestant circles, including movements like Radical Orthodoxy and “Yale School” theology, have influence outside the world of academic theology. Hostility and sweeping caricature are infrequent. Popular antagonism is waning even among Catholicism’s most traditional Protestant critics. This shift is signaled by the very title of a recent book: *Is the Reformation Over? An Evangelical Assessment of Contemporary Roman Catholicism* (Noll & Nystrom, 2005). But unlike other periods in church history, it is remarkable to note that issues in dogmatic theology can not be said to elicit widespread interest either within Christian communities or the broader culture. They lack the political and spiritual potency they once exercised in uniting and dividing the Christian community. Moral theology is a different story.

Ethical issues now energize Christian churches as much as they capture the newspaper headlines. Christian communities increasingly are defined by “conservative” or “liberal” stances on moral issues rather than by dogmatic confessions or even divergent moral theories. To be sure, these issues may involve deep theological differences regarding what it means to be human and what it means to be divine. These differences sometimes are made explicit, especially in relation to ecclesiology and anthropology. The renewed interest in Thomism by Protestant moralists, however, is merely one sign of Protestant and Catholic rapprochement.<sup>16</sup> A recent anthology also points to “a remarkable convergence” in Protestant, Catholic, and Eastern Orthodox theological recovery of “marriage metaphors for the relation of God and God’s people” that “treat sexuality and marriage as ways in which God can produce human beings who become, over time, aware of grace and communities of virtue” (Rogers, 2002, p. xix). At the same time, in the broader culture, the papacy’s theological defense of “moral realism” and a “culture of life” are largely responsible for the changing attitudes toward the Catholic moral tradition by many Protestants. In the USA, alliances between evangelicals and Catholics on a number of controversial moral issues fuel media fascination with the “religious right.” But it also signals the transformative effect of John Paul II. Protestant sensibilities regarding the Catholic moral tradition and its theology changed dramatically under his papacy. Beyond this relatively recent coalition, Catholic contributions to moral inquiry enjoy a status like never before in American history. Luther’s burning of canon law books and confessional manuals have been replaced by eager Protestant engagement with Catholic thought. The field of bioethics and the ethics of war and peace are dramatic cases in point, but so are the receptions of encyclicals like *Veritatis Splendor* and *Deus Caritas Est*. It is simply no longer helpful (if it ever was) to contrast Protestant “divine command” ethics with Catholic “natural law” ethics. If ethics is an integral part of dogmatics, as Karl Barth insisted, then the future

---

<sup>16</sup>See M. Cromartie (1997). *A Preserving Grace: Protestant, Catholics, and Natural Law*. Grand Rapids, MI: Eerdmans, and J. Bowlin (2002). ‘Contemporary Protestant Thomism,’ in P. van Geest, H. Goris, & C. Leget (Eds.), *Aquinas as Authority*. Louvain, Belgium: Peeters.

prospects of Protestant–Roman Catholic moral dialogue might profit from this approach.<sup>17</sup>

The August 2006 cover of *Mother Jones* magazine featured a striking visual: tiny plastic baby dolls in an ice cube tray set against a bright pink background. A lone (black) baby appears thawing outside the confines of the tray like a forgotten carnival trinket. The provocative headline promised another chapter in the cultural politics of religion, science, and reproduction: “Icebox Orphans & Fertility Gods: The hot war over frozen embryos/Who’s going to thaw out 500,000 ‘microscopic Americans’?/Love, politics, and the perils of high-tech baby-making.” Readers might have expected a familiar mapping of the terrain within the logic of a culture war in which everyone plays their scripted role. In fact, the lead article outlined some of the major features of the debate in order to challenge “the reproductive rights community” to hold “an out-loud moral conversation between people who had been through, and thought through” the difficult issues related to the disposition of embryos that have emerged because of ART (Mundy, 2006, p. 45). The author laments, however, that “such a grand, collective conversation seems unlikely, in this charged political atmosphere” (Mundy, 2006, p. 45). The issue of embryo adoption presents many challenges, but a remarkable need in such an atmosphere is the Catholic Church’s contribution – marked by the rigor, prudence, and charity of its moral tradition within a *theological* framework.

## References

- Andolsen, B. (1981). ‘Agape in feminist ethics,’ *Journal of Religious Ethics*, 9, 69–83.
- Bainton, R.H. (1957). *What Christianity Says About Sex, Love and Marriage*. New York: National Board of Young Men’s Christian Associations.
- Barth, K. (1961). *Church Dogmatics: The Doctrine of Creation*, Vol. III/4. Edinburgh, Scotland: T&T Clark.
- Berkman, J. (2002). ‘Adopting embryos in America: A case study and an ethical analysis,’ *Scottish Journal of Theology*, 55, 438–460.
- Berkman, J. (2003). ‘Gestating the embryos of others: Surrogacy? Adoption? Rescue?’ *The National Catholic Bioethics Quarterly*, 2, 309–329.
- Black, R. (2001). *Christian Moral Realism: Natural Law, Narrative, Virtue, and the Gospel*. Oxford: Oxford University Press.
- Bowlin, J. (2002). ‘Contemporary protestant thomism,’ in P. van Geest, H. Goris, & C. Le get (Eds.), *Aquinas as Authority*. Louvain, Belgium: Peeters.
- Brakman, S.V. (2007). ‘Paradigms, practices and politics: Ethics and the language of human embryo transfer/donation/rescue/adoption,’ in M.J. Cherry & A.S. Iltis (Eds.), *Pluralistic Casuistry: Moral Arguments, Economic Realities, and Political Theory: Essays in Honor of Baruch A. Brody* (pp. 191–210). Dordrecht, The Netherlands: Springer.
- Brugger, E.C. (2005). ‘In defense of transferring heterologous embryos,’ *The National Catholic Bioethics Quarterly*, 1, 95–112.

<sup>17</sup>For an excellent Catholic model for this possibility, see J. Finnis, G. Grisez, & J. Boyle. (1987). *Nuclear Deterrence, Morality, and Realism* (pp. 367–390). Oxford: Clarendon Press.

- Bunge, M. (Ed.) (2001). *The Child in Christian Thought*. Grand Rapids, MI: Eerdmans.
- Bush, George W. (2005). President *Discusses Embryo Adoption and Ethical Stem Cell Research*, May 25, Office of the Press Secretary. [Online]. Available: <http://www.whitehouse.gov/news/releases/2005/05/20050524-12.html>.
- Cahill, L.S. (2001). 'Using Augustine in contemporary sexual ethics: A response to Gilbert Meilaender,' *Journal of Religious Ethics*, 29, 25–33.
- Cavadini, J. (2005). 'Feeling right: Augustine on the passions and sexual desire,' *Augustinian Studies*, 36, 195–217.
- Clapp, R. (1993). *Families at the Crossroad: Beyond Traditional and Modern Options*. Downers Grove, IL: InterVarsity Press.
- Congregation for the Doctrine of the Faith (1987). *Donum Vitae (Instruction on Respect for Human Life in Its Origin and on the Dignity of Procreation: Replies to Certain Questions of the Day)* [Online]. Available: [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_19870222\\_respect-for-human-life\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19870222_respect-for-human-life_en.html).
- Cooperman, A. (2005). 'Catholics split on embryo issue,' *The Washington Post*, May 31, A1.
- Cromartie, M. (1997). *A Preserving Grace: Protestant, Catholics, and Natural Law*. Grand Rapids, MI: Eerdmans.
- Demartis, F. (1998). 'Mass pre-embryo adoption,' *Cambridge Quarterly of Healthcare Ethics*, 7, 101–103.
- de Rosa, F.M. (2005). 'The transfer of abandoned frozen embryos: Identifying the object of the act,' *The National Catholic Bioethics Quarterly*, 1, 59–62.
- Ennis, M. (2005). 'Culture of strife,' *Texas Monthly*, Oct., 102–110.
- Finnis, J., Grisez, G., & Boyle, J. (1987). *Nuclear Deterrence, Morality, and Realism*. Oxford: Clarendon.
- Grisez, G. (1997). *The Way of the Lord Jesus, Vol. 3: Difficult Moral Questions*. Quincy, IL: Franciscan Press.
- Gustafson, J. (1978). *Protestant and Roman Catholic Ethics: Prospects for Rapprochement*. Chicago, IL: University of Chicago Press.
- Hauerwas, S. (1985). 'The family as a school of character,' *Religious Education*, 80, 272–285.
- Hauerwas, S. & Bennett, J. (2005). 'Catholic social teaching,' in G. Meilaender & W. Werpehowski (Eds.), *The Oxford Handbook of Theological Ethics* (pp. 520–537). Oxford: Oxford University Press.
- Jenson, R. (2005). 'Reading the body,' *The New Atlantis*, 9, 73–82.
- Kaveny, M.C. (2000). 'Appropriation of evil: Cooperation's mirror image,' *Theological Studies*, 61, 280–313.
- Kennedy, T. (2000). 'A deceptive good,' *Christianity Today*, 44, 108–109.
- Mangina, J. (2004). 'Bearing fruit: Conception, children, and family,' in S. Hauerwas & S. Wells (Eds.), *The Blackwell Companion to Christian Ethics* (pp. 468–480). Oxford: Blackwell.
- May, W.E. (2005). 'On "Rescuing" frozen embryos: Why the decision to do so is moral,' *The National Catholic Bioethics Quarterly*, 1, 51–57.
- Mayoue, J. (2005). 'Legal and ethical challenges of embryonic adoption,' in T. Jackson (Ed.), *The Morality of Adoption: Social-Psychological, Theological, and Legal Perspectives* (pp. 262–282). Grand Rapids, MI: Eerdmans.
- McKenny, G.P. (2005). 'Responsibility,' in G. Meilaender & W. Werpehowski (Eds.), *The Oxford Handbook of Theological Ethics* (pp. 237–253). Oxford: Oxford University Press.
- Meilaender, G. (2001). 'The author replies,' *Journal of Religious Ethics*, 29, 43–50.
- Michelmann, H.W. & Nayudu, P. (2006). 'Cryopreservation of human embryos,' *Cell and Tissue Banking*, 7, 135–141.
- Morgan, E. (1944). *The Puritan Family: Religion and Domestic Relations in Seventeenth-Century New England*. New York: Harper & Row.
- Mundy, L. (2006). 'Souls on ice,' *Mother Jones*, Aug., 39–45.
- Murray, M.J. (2004). 'Protestants, natural law, and reproductive ethics,' in C. Tollefsen (Ed.), *John Paul II's Contribution to Catholic Bioethics* (pp. 121–129). Dordrecht, The Netherlands: Springer.

- Nachtigall, R., Becker, G., Friese, C., Butler, A., & MacDougall, K. (2005). 'Parent's conceptualization of their frozen embryos complicates the disposition decision.' *Fertility and Sterility*, 84, 431–434.
- Niebuhr, H.R. (1963). *The Responsible Self: An Essay in Christian Moral Philosophy*. New York: Harper & Row.
- Noll, M. & Nystrom, C. (2005). *Is the Reformation Over? An Evangelical Assessment of Contemporary Roman Catholicism*. Grand Rapids, MI: Baker Academic.
- O'Donovan, O. (1984). *Begotten or Made?* Oxford: Clarendon.
- O'Donovan, O. (1986). *Resurrection and Moral Order: An Outline for Evangelical Ethics*. Grand Rapids, MI: Eerdmans.
- O'Donovan, O. (2005). *The Ways of Judgment*. Grand Rapids, MI: Eerdmans.
- Outka, G. (2005). 'The ethics of human stem cell research,' *Kennedy Institute of Ethics Journal*, 12, 175–213.
- Petersen, T. (2002). 'The claim from adoption,' *Bioethics*, 16(4), 353–375.
- Post, S. (1994). *Spheres of Love: Toward a New Ethics of the Family*. Dallas, TX: Southern Methodist University Press.
- Ramsey, P. (1970). *Fabricated Man: The Ethics of Genetic Control*. New Haven, CT: Yale University Press.
- Rogers, E. (2002). *Theology and Sexuality: Classic and Contemporary Readings*. Oxford: Blackwell.
- Saake, J. (2005). *Hannah's Hope: Seeking God's Heart in the Midst of Infertility*. Colorado Springs, CO: NavPress.
- Santurri, E. (1987). *Perplexity in the Moral Life: Philosophical and Theological Considerations*. Charlottesville, VA: University Press of Virginia.
- Sauer, M/V. (Ed.) (1998). *Principles of Oocyte and Embryo Donation*. New York: Springer.
- Schudt, K. (2005). 'What is chosen in the act of embryo adoption?' *The National Catholic Bioethics Quarterly*, 1, 63–67.
- Schweiker, W. (1995). *Responsibility and Christian Ethics*. Cambridge: Cambridge University Press.
- Spar, D. (2006). *The Baby Business: How Money, Science, and Politics Drive the Commerce of Conception*. Boston, MA: Harvard Business School.
- Stein, R. (2007). 'Embryo bank' stirs ethics fears: Firm lets clients pick among fertilized eggs,' *The Washington Post*, Jan. 6, A1.
- Thomson, J.J. (1971). 'A defense of abortion,' *Philosophy and Public Affairs*, Fall 1(1), 47–66.
- Weil, E. (2006). 'Breeder reaction,' *Mother Jones*, Aug., 33–37.
- Werpehowski, W. (2002). *American Protestant Ethics and the Legacy of H. Richard Niebuhr*. Washington, DC: Georgetown University Press.
- Wheeler, S. (2005). 'Christians and family,' in G. Meilaender & W. Werpehowski (Eds.), *The Oxford Handbook of Theological Ethics* (pp. 343–359). Oxford: Oxford University Press.
- Williams, T.D. (2005). 'The least of my brethren: The ethics of heterologous embryo transfer' *The Human Life Review*, Summer, 87–98.

**Part III**  
**Morality in the Practice**

# Development of the National Embryo Donation Center

Jeffrey Keenan

## 1 Introduction

The use of Assisted Reproductive Technologies (ARTs) has proliferated rapidly since the birth of Louise Brown in England in 1978 via in vitro fertilization with embryo transfer (IVF-ET, or more commonly, IVF). The ability to cryopreserve embryos followed shortly thereafter, increasing the potential success rates while decreasing the costs, thereby becoming a standard practice among ART clinics. Unfortunately, the proliferation of these technologies led to an unanticipated problem, i.e., the prolonged storage of large numbers of frozen embryos.

The reasons that couples fail to use or make a decision on the fate of their frozen embryos has been the subject of a number of studies. Some couples are simply uncomfortable with the idea of anyone else raising their biological child(ren). Others are concerned about whether their embryos will go to a “good home”. Another concern is that the offspring will eventually find them and demand to know why they were not raised by their genetic parents. A less rational, but still common concern, is that their “unknown” children might eventually marry their brother or sister. Finally, other couples simply don’t understand the processes involved, and due to a lack of information or someone to speak to, simply avoid the decision entirely (Elford et al., 2004, pp. 1154–1155; de Lacey, 2005, p. 1668).

Whatever the reasons, the result is that over 400,000 embryos are currently being cryopreserved in the USA alone. And, although surveys indicate that 90% or more of couples are keeping them “for their own use” (Hoffman et al., 2003, p. 1063), experience shows that a large percentage, perhaps one-half of them, will never be used by their genetic parents.

The National Embryo Donation Center (NEDC) was founded to address this dilemma. The idea of a national center that provided comprehensive embryo adoption and donation services was originally the idea of Dr. David Stevens, who serves as CEO of the Christian Medical and Dental Associations (CMDA). Dr. Stevens presented me with this idea in late 2002. We agreed that the large, and increasing, number of frozen embryos was of concern from medical, legal, and ethical perspectives. We saw the potential to assist both couples who have remaining frozen embryos, as well as infertile couples who desire to experience the

joy of pregnancy and childbirth. We believed that the most life-honoring option for unused embryos was to give them the chance to develop into their fully human potential. After a number of discussions, we agreed that the idea of establishing a national center for embryo donation and adoption was viable and worth pursuing.

Not surprisingly, there were a large number of factors that needed to be considered, and steps to be taken, in order to achieve such an undertaking. A series of events transpired that facilitated this process, including transitions in my practice and the construction of a new Women's Hospital by Baptist Health Systems in Knoxville. We were fortunate in obtaining trained staff, a custom assisted reproduction suite, advanced and highly technical equipment, and necessary legal advice within a relatively short period of time. Baptist Health System was instrumental in many of these areas, and without their support and the vision of the administration for this project, it is doubtful that the NEDC would have come to fruition.

Our vision was for embryo adoption to be a blending, of sorts, between traditional adoption and standard infertility treatment. Therefore, we sought the assistance of Bethany Christian Services, which is the umbrella organization for Bethany Adoption Services. Bethany is the nation's largest adoption agency. Bethany has provided invaluable insight and assistance in negotiating what was previously unknown territory to an infertility physician. Working together, we reached an agreement on a modified home study that would take into account the special circumstances which embryo adopting (infertile) couples face.

Finally, it was necessary to form a Board of Directors to oversee the operations of the NEDC, and to assist in the development of the Center. We chose representatives from each organization, i.e., the CMDA, Bethany, and Baptist Health System of East Tennessee as founding board members, and have since added individuals from the legal and corporate arenas to broaden the experience and knowledge base of the board.

## 2 Options for Unused Cryopreserved Embryos

Potential embryo donors face a difficult dilemma. In general, they have already benefited from their assisted reproductive efforts and have one or more children. They feel that they have completed their family, but have the genetic siblings of their child(ren) stored in liquid nitrogen at a clinic. They realize as well as anyone the personhood of these embryos, since some of them have already completely developed. Therefore, any procedure that results in the death of these embryos is, or at least should be, morally repugnant for them. What are their other options?

First, they must consider whether or not to change their family plans and proceed with further attempts at embryo transfer to the mother. There is little doubt that this is the best option for both parents and embryos. However, for a variety of reasons, a large percentage of couples do not use this preferred option.

Destruction of the embryo(s) is another option. This may take several forms, including thawing and disposal, transfer into the mother's uterus at a time that precludes implantation, and of course using these embryos in research. Some clinicians have confidentially

admitted to using extra frozen embryos as “practice” embryos for training of laboratory personnel. The negative ethical implications of any of these approaches seem obvious.

Embryo donation for adoption is the final option. However, as couples tend to view these embryos as “virtual children”, they often have difficulties in “letting go” of these children, again, for a variety of reasons (de Lacey, 2005, p. 1665). Therefore, a great number of couples procrastinate in making a “final” decision for their embryos. If asked, they respond that they intend to use them in the future. Statistically, however, the chance that couples will use their frozen embryos decreases significantly as time goes by. In essence, they are making a default decision to keep the embryos in cryopreservation indefinitely. We do not believe that indefinite cryopreservation is a true option for these embryos. First, the genetic parents will not live indefinitely. Second, once they die, the embryos will then become the burden and legal responsibility of another. Such a situation could even lead to the very complex occurrence of a woman giving birth to her own sibling. Finally, no one knows the lifespan of cryopreserved embryos, but it is at least 12 years, and probably much longer (Revel et al., 2004, p. 328).

Although some, such as Stempsey (this volume) make a philosophical and ethical argument that indefinite cryopreservation is the most appropriate “destiny” for these embryos, we do not feel that this is most appropriate way to respect the life and dignity of these nascent human beings. Although the lifespan of embryos in cryopreservation is unknown, it is not unlimited, and sooner or later these embryos will die. Such a fate does not glorify God nor edify His people.

Therefore, our goal at the NEDC was to make the process of embryo donation and adoption as practical, economic, and as emotionally acceptable as possible for both embryo donors and adopters.

### **3 The Concerns of Embryos Donors and Recipients, and Their Impact on Establishing the Policies and Procedures of the NEDC**

In establishing policies and practices, it was crucial to remember the unique needs of the two participating parties, i.e., the embryo donors and embryo recipients. Our goal was to minimize barriers to both donation and adoption, of which there are many.

Embryo donors have a variety of legitimate concerns. One of the most significant concerns that potential embryo donors face is the ability to ensure that their embryos will go to a “good home”. The NEDC has addressed this concern with the policies and options that it provides for donating couples. First, we have stringent guidelines regarding age, marital status, medical history, and lack of factors which could negatively influence a pregnancy or childhood, such as substance abuse/abuse. We have also required that the couples undergo a home study by a licensed adoption agency. This process involves not only counseling, but also an assessment of the couples emotional, psychological, and even financial ability to care for an adoptive



child. Furthermore, fingerprinting and an FBI background check is required to rule out the possibility of omitted information by the adopting couples.

However, for couples who have concerns despite these safeguards, or who simply want a greater say in the decision process, we offer any degree of “openness” in the donation/adoption process. Couples may choose the exact couple they wish to receive their embryos, and may even remain anonymous in the process if they choose.

This option also addresses another common (if somewhat irrational) fear that donating couples have, i.e., the possibility that their living children might marry one of their (unknown) siblings through this process. For couples who want a high degree of anonymity on both sides, they may stipulate that the adopting couple be from, or not be from, a certain state or region of the country, without having further input on the specifics or identity of the couple.

A further apprehension of donating couples is the possibility that their genetic children might one day seek their identity and demand to know why they were placed for adoption. This issue may cause anxiety for most couples since the decision to parent or donate their embryos is generally an elective one rather than a medical or social one. That is, the great majority of embryo donors could medically and financially undergo one or more embryo transfer procedures. There is an understandable reluctance to one day have to explain to a genetic child that financial, social, or other similar concerns were the deciding factor(s) in choosing to donate them (as embryos) to another couple.

Regardless of any moral arguments for or against the above, it remains a real concern of potential embryo donors. Although the NEDC agrees that open donation/adoption is the preferred route to take in the process, we also offer complete anonymity for both the donors and adopters in an attempt to address these concerns and increase the chances for birth for frozen embryos. To date, somewhat more than half of our embryo transfers have been performed anonymously.

A final concern that we will address here is the lack of trained counselors in this area and virtual absence of someone to talk with about embryo donation and adoption. The NEDC has addressed this anxiety in a number of ways. First and foremost, our partners at Bethany Adoption Services have initiated training seminars for their branch personnel across the USA. Furthermore, we will be attending national adoption professional meetings in the USA over the next two years. Finally, there are experienced individuals at the NEDC to speak with, including our embryologist, nurses, and physician.

## 4 The NEDC Model

In forming the NEDC, we wished to remove barriers to embryo donation and adoption while maintaining high standards of medical care. We therefore modeled our program in such a way as to insure these goals. One method of national embryo adoption is that used by the *Snowflakes* division of Nightlight Christian Adoptions.

In their model, embryo donors and adopters are matched in an open format, and the recipient couple travels to a nearby clinic to receive their transfer.

The NEDC has chosen to limit the number of physicians and clinics performing services to couples. It is our belief that this is the only way to maintain quality control of the process and to ensure the donors that their embryos will have the best chance for successful implantation and birth. It is well known that frozen embryo transfer rates vary from clinic to clinic, and within a clinic, from physician to physician. In addition, it is also known that many clinics will not transfer embryos of “poor quality,” as their chance of implantation is significantly lower (although higher than zero).<sup>1</sup> Limiting the number of affiliate clinics is the only way to ensure that each center is committed to respecting the life and dignity of the embryo and giving it the best possible chance to develop into an ongoing pregnancy and beyond. The downside of this approach is that couples must generally travel some distance to undergo their embryo adoption transfer. We have not found this to be a significant obstacle to most couples.

The NEDC has been established as a non-profit, entity as a 501(c) 3 non-profit entity. Furthermore, affiliate clinics give discounts (from their standard frozen transfer fees) to couples adopting embryos. This has allowed us to keep the costs far lower than other types of assisted reproduction which the couples may be considering such as IVF with or without donor eggs. We hope this approach helps to eliminate any potential financial barriers to potential adoptive couples.

## 5 How the Process Works

Only married couples are allowed to adopt embryos. Individuals or couples wishing to donate their embryos are given medical and genetic screening forms to complete, the number and stage/quality of their embryos is logged, and they are asked to undergo repeat screening for infectious diseases. Once this information is obtained, they must decide whether to donate their embryos on an anonymous or open basis.

If the embryo donor(s) chooses open donation, they are asked to select a recipient couple who has agreed to open adoption. The latter write and submit a profile of themselves and perhaps photos, similar to the procedures in many traditional adoptions. The donating couple may make any stipulations or requirements they like on the process and/or couple. For example, they may choose only

---

<sup>1</sup>For a description of established protocols for embryo quality evaluation, please see E. Van Royen, K. Mangelschots, D. DeNeubourg, M. Valkenburg, M. Van de Meersee, G. Ryckaert, W. Eestermans, & J. Gerris (1999). ‘Characteristics of a top quality embryo, a step towards single-embryo transfer,’ *Human Reproduction*, 14, 2345–2349. For an analysis of the effect of embryo quality on pregnancy rates, please see: M. Erenus, C. Zouves, P. Rajamahendran, S. Leung, M. Fluker, V. Gomel (1991). ‘The effect of embryo quality on subsequent pregnancy rates after in vitro fertilization,’ *Fertility and Sterility*, 56, 707–710.

to know their names and histories, or they may want full communication between them, with or without future contact with any child(ren) born as a result of the donation. There may be negotiations that must take place between the donating and adopting couples, and these arrangements are handled by Bethany or a similar adoption counselor/agency. The involved couples are free to accept or reject any terms requested by the other, but of course both couples must reach a final agreement prior to the transfer of any embryos to the recipient. We do not limit the stipulations that a donating couple places on the recipient couple, since we do not want to inhibit donation of embryos which would otherwise be destined to die or be destroyed.

If the couple chooses anonymous donation, they simply sign the consent form/waiver of rights document and the embryos are shipped immediately to the NEDC. Even in the case of anonymous donation, however, the donating couple may make certain stipulations on the recipient couple, for example, their state of residence or religious affiliation. Recipient couples undergoing anonymous adoption are shown profiles of donating couples which include their physical characteristics and medical and genetic history. They then choose a set of embryos for transfer to the wife's womb.

Adopting couples must necessarily go through a more lengthy and difficult process to ensure the best possible outcome for the donated embryos. They must fill out an application form and submit it with an initial screening fee. We require and ascertain that adopting couples meet a number of baseline criteria. These include: (1) Absence of any medical factors that would lessen chances for implantation or impede their ability to care for children; (2) Absence of significant communicable diseases; (3) That they be non-smoking and free of alcohol and illicit drug use/dependency; (4) A maternal age not greater than 45, and combined age of the couple not greater than 100 at the time of the embryo transfer; (5) Passing the home study requirements of the adoption agency, including an FBI background check and social/financial counseling and assessment; and (6) Compliance with the medical regimens and protocols leading up to the embryo transfer procedure (ASRM Ethics Committee, 2002, pp. S9–S10).

Once the above has been initiated, the couple makes an appointment at one of the NEDC affiliate offices. A complete reproductive history and exam is performed, risks explained, questions addressed, and certain procedures are performed or scheduled which are necessary for optimal outcomes. Once this is completed, the patient is scheduled for her embryo transfer procedure, and she is started on a medical regimen to prepare the uterus for receiving embryos. Initial monitoring is usually performed at a local clinic, and the couple travels to the NEDC clinic just prior to the transfer. Following the transfer, she remains on a combination of oral and injectable medications for 10–12 days until a pregnancy test is performed. If the test is positive, she will remain on her medications for another 8–10 weeks.

If the test is negative, a couple may choose to attempt up to three transfer procedures to achieve pregnancy. This number was chosen somewhat arbitrarily as a balance between allowing the recipients an adequate chance of success without performing repeated transfer attempts on a woman who may unexpectedly have little chance of successfully implanting an embryo.

A final consideration is the issue of “embryo mixing”, i.e., transferring embryos from more than one genetic parent at the same time. While some programs have chosen not to allow this option, we permit this in cases where both the donor and recipients agree to undergo genetic testing (in the event of a live birth) to determine parentage. This is done as a precaution in the event that future health developments in the parents or children might necessitate a knowledge of the genetic lineage. Embryo mixing allows greater flexibility for the recipient couples, since sometimes only one embryo will be available for transfer from a donor, but transfer of one embryo decreases the chances for success. Our policy is to transfer 2–3 embryos at a time. In the event of multiple pregnancy, the couples are bound by their consent forms to carry the pregnancy to viability without attempting selective reduction or other procedures that would jeopardize the health of the child(ren).

The NEDC is committed to giving every embryo the chance to develop, implant, gestate, and be born. In light of Stempsey’s (this volume) concern regarding the quality issue, at the NEDC, only embryos which have stopped growing and dividing are discarded. Even embryos with poor implantation potential are transferred, since even poor quality embryos can, however uncommonly, become viable pregnancies. The NEDC does not use preimplantation genetic diagnosis (PGD) or any other methods to screen for “healthy” embryos. However, as stated above, the genetic parents of the embryos do fill out questionnaires to help determine if there is any significant risk of genetic diseases in their embryos.

## 6 Results

Thus far we have performed approximately 80 transfers. Both donors and recipients have come from across the USA for this procedure, including Alaska. Our current ongoing pregnancy and delivery rate stands at approximately 42% per embryo transfer. The national average for frozen embryo transfer is approximately 25%. In 2006 we performed 39 donor embryo transfers with a 50% pregnancy rate (since these have not all come to term, we do not know the delivery rate /transfer yet for just 2006). Approximately 90% of couple receiving donated embryos are Caucasian as are the donors. We have approximately 3% biracial, 3% Hispanic, 2% Black and 2% Asian.

There are several limiting factors in providing this service appropriately. The first and most obvious is the number of embryos available for donation. The second is the number of couples requesting this service, and related to this is the need to allow the recipients to proceed at a comfortable pace, and in some cases well over a year has been required for couples to complete the necessary steps detailed above.

There is a great need to educate people on the option of embryo donation and adoption. First and foremost, potential donors must be made aware that their concerns are appreciated and addressed to their satisfaction. Next, there is still a huge void in awareness of this option by both donors and adopters, and to some extent by clinics also. Our desire is to make embryo donation and adoption as commonplace

and well accepted as traditional adoption. Our belief is that this goal will require a significant amount of time and work, but that it is achievable.

## 7 Increasing Embryo Adoption Awareness

Embryo donation/adoption is an extremely underutilized process in the USA and elsewhere. In our country, only about 2% of the 400,000 cryopreserved embryos have been earmarked for donation to other couples (Hoffman et. al., 2003, p. 1066). Certainly, the donor concerns listed above have limited this number. However, there is also a significant lack of knowledge and awareness of this option among both clinics and infertile couples.

To this end, the US Department of Human Services has recently awarded its third grant for embryo adoption awareness (Grant #EAAP A941000-01-00). This grant awarded the NEDC (with the Christian Medical Association) \$309,000 per year for 2 years to promote embryo adoption awareness. We are pursuing a multimedia approach utilizing a number of vehicles and venues. Some of these include: direct mail campaigns to physicians, fertility clinics, infertility groups, and couples wishing to adopt; attending professional meetings for fertility physicians and adoption workers; Internet marketing including search engine optimization and pay-per-click advertising; advertising in medical and adoption professional journals; in-person visits to some of the nation's largest fertility clinics by an NEDC employee; and attempts to continue to obtain interviews on local and national radio, television, and print outlets. We have documented that this approach has increased the number of couples seeking information on this life-saving infertility option.

## 8 The Future

“Embryo adoption” although a term clearly understood by all, is not a legal entity in the USA, with the exception of Louisiana (Cheeley, this volume). Furthermore, the term is maligned by many groups and individuals who fear that recognition of human embryos as “life” and worthy of “adoption” could cause one more chink in the armor of *Roe v. Wade* (Brakman and Weaver, this volume).

The lack of legal status for embryo donation and adoption also potentially puts both donors and recipients at some risk, as the process, which is now managed by contract law, is susceptible to court rulings which could overturn contracts between two parties.

In response to these issues, the NEDC is currently working on model legislation which will codify embryo adoption and donation and provide protections for donors, recipients, offspring, and physicians. This significant undertaking is likely many years away from being a part of the legal landscape in this country.

How long will embryo adoption be necessary to deal with the dilemma of unwanted frozen embryos? Ideally, we would hope to work ourselves out of a job at some point in the future. However, is it realistic to hope for this when the number of IVF procedures continues to climb in the USA and around the world?

There are several ways in which the dilemma of large numbers of surplus embryos may be one day solved. In Italy, legislation has been enacted which allows only three eggs to be fertilized at a time. The remaining eggs can be frozen, but embryo cryopreservation is forbidden. Initial analysis of this country's data shows that there has, surprisingly, been no decrease in the IVF pregnancy rates since this law has been passed (Ragni et al., 2005, p. 2227). However, it is likely that the cumulative live birth rate (i.e., the total number of births resulting from a single egg retrieval procedure) will drop substantially, since freezing eggs is not as effective as freezing embryos (Ragni et al., 2005, p. 2227).

Other than legislation, the surplus of embryos can potentially be decreased by voluntarily limiting the number of eggs inseminated and thus fertilized during an IVF procedure. Most clinics routinely inseminate all retrieved eggs. In general, two thirds of inseminated eggs will actually fertilize. With the current success rates of IVF and frozen embryo transfer, and the typical desire of families to limit their children to two or perhaps three, this means that inseminating more than 14 eggs will lead to a high likelihood that the couple will not want to use all of the generated embryos. There is inadequate counseling done with patients about the possibility of having large numbers of embryos remaining after they have completed their families. We feel it is unethical to put patients in this position, and we recommend not creating more than 8–9 embryos at a time for a couple. In general, patients are very understanding of and receptive to this principle. We feel that this approach can and should be adopted by fertility clinics in this country and around the world to alleviate the problem of excess embryos.

Research is ongoing in the field of oocyte cryopreservation. It is likely that this technique will someday be able to achieve similar pregnancy rates to embryo cryopreservation. At that time, with sufficient patient education and demand, clinics would have added incentive to abandon their practice of unlimited embryo creation in favor a more conservative approach.

One thing seems clear – that the number of cryopreserved embryos is likely to continue to increase in this country without a significant change in legislation or fertility clinic practice patterns. We believe that ignoring this dilemma is unethical and professionally irresponsible, and not in the best interests of fertility patients, their embryos, or our nation.

## References

- ASRM Ethics Committee (2002). 'Guidelines for cryopreserved embryo donation,' *Fertility and Sterility*, 77 (suppl 5), S9–S10.
- de Lacey, S. (2005). 'Parent identity and "virtual" children: Why patients discard rather than donate unused embryos,' *Human Reproduction*, 6, 1661–1669.

- Elford K., Lawrence C., & Leader A. (2004). 'Research implications of embryo cryopreservation choices made by patients undergoing in vitro fertilization,' *Fertility and Sterility*, 81, 1154–1155.
- Erenus, M., Zouves, C., Rajamahendran, P., Leung, S., Fluker, M., Gomel, V. (1991). 'The effect of embryo quality on subsequent pregnancy rates after in vitro fertilization,' *Fertility and Sterility*, 56, 707–710.
- Hoffman D.I., Zellman G.L., Fair C.C., Mayer J.F., Zeitz J.G., Gibbons W.E., & Turner T.G. (2003). 'Cryopreserved embryos in the United States and their availability for research,' *Fertility and Sterility*, 79, 1063–1069.
- Ragni, G., Allegra, A., Anserini, P., Causio, F., Ferraretti, A.P., Greco, E., Palermo, R., & Somigliana E. (2005). 'The 2004 Italian legislation regulating assisted reproduction technology: A multicentre survey on the results of IVF cycles,' *Human Reproduction*, 20, 2224–2228.
- Revel, A., Safran, A., Laufer, N., Lewin, A., Reubinov, B.E., Simon, A. (2004). 'Twins delivery following 12 years of human embryo cryopreservation: case report,' *Human Reproduction*, 19, 328–329.
- Van Royen, E., Mangelscoots, K., DeNeubourgh, D., Valkenburg, M., Van de Meerssche, M., Ryckaert, G., Eestermans, W., & Gerris, J. (1999). 'Characteristics of a top quality embryo, a step towards single-embryo transfer,' *Human Reproduction*, 14, 2345–2349.

# An Embryo Adoptive Father's Perspective

John Stanmeyer

## 1 Introduction

I was asked to contribute to this volume my perspective as the father of a child who was born from an embryo adoption (EA). I was asked to respond specifically to the issues of fatherhood and the marriage bond, and how they are supposedly violated by embryo adoption. I hope to also offer the additional perspective of a father who also has adopted traditionally, as well as my thoughts on EA as a layperson with training in philosophy, theology, and bioethics. I will focus my remarks on three topics: The status of the embryo as a full human person, the status and dignity of adoptive fatherhood, and the issues raised by those in opposition to embryo adoption regarding sex and marriage. Through my remarks I hope it will become apparent that Suzanne's and my support of embryo adoption is a result of our study, prayer, and experience.

## 2 The Status of the Embryo as a Full Human Person and the Issues Raised by Those in Opposition to Embryo Adoption regarding Sex and Marriage

It seems to me that within Catholic thought, there is a tendency among some moralists to reject EA by default, because of its close association with in vitro fertilization (IVF). From my perspective as an EA father, though, what we did in choosing EA was far from IVF and far from condoning IVF (or artificial insemination, etc.). There is a fundamental distinction between what I have experienced and what couples who go through IVF experience. In IVF, a couple dominates nature to create a child. In IVF, the parent has – through the doctor – co-opted God's role as the Lord of Creation, who would decide when and where the gift of life is to be given. Those who engage in IVF are taking for themselves what is not theirs to take. But in EA we were not taking for ourselves, any more than someone who engages in traditional adoption is taking for themselves. Rather, we were offered a gift by God – an opportunity, to give of ourselves, to adopt a child



into our family. Yes, the child was created by somebody else through IVF, an inherently sinful process. But God transformed that sin into something grace-filled and better – an opportunity for us to adopt a child, for whom God was a co-creator. Even though the child was created illicitly in a Petri dish, God remains a loving co-creator, giving the child its human soul, its free will and intellect, making it in His own image and likeness.

When the first Adam sinned and humanity fell, it was a grave sin imputed to all generations. Yet God in his infinite mercy and goodness transformed that sin, from the beginning, into an opportunity for something far better – the gift of redemption by the Last Adam, Christ Jesus, through Whom we become adopted sons of God, partakers of the divine nature, sharing in His divine Sonship. Thus in the Easter Vigil sequence we pray, “Oh, *felix culpa*,” (Oh, happy sin) of Adam. IVF, a regrettable and gravely sinful abomination of nature, is, for the embryo-adoptive couple, a *felix culpa*, an opportunity for the gift of adoption. It is a sin that God can transform into something far better.

There are those, however, who say that what makes embryo adoption intrinsically different from traditional adoption is that the woman becomes intentionally pregnant with a child who is not the fruit of her sexual union with her husband. It seems to me that those who argue this are espousing a false dilemma between the sanctity of life and the sanctity of marriage. First of all, pregnancy is not integral to the conjugal act. If it were, then every conjugal act would result in pregnancy, and any act that didn't result in pregnancy would not truly be conjugal. Thus, the mere occurrence of a pregnancy apart from conjugal relations does not necessarily destroy the conjugal love of marriage. Regarding the quote from an anonymous husband interviewed by Fr. Pacholczyk as he relates in his paper in this volume, “She should get pregnant only through me” (p. 70). I would restate that quote in a way that I believe would make it a morally correct statement: “the only way my wife and I should *create life* is through the physical expression between us of our marital love.” I agree that the gift of procreation is intrinsic to marriage, but in the case of EA, I submit that the abuse of that gift has already been done by someone else, somewhere else. It is now, proverbially speaking, water under the bridge. The question is, now that you have a person who is already created, what do you do with him or her? The only moral response to a person is love.

Through EA, we did not separate the unitive and procreative aspects of the marital act. Those aspects were separated by those before us who engaged in IVF. The singular act of separating the procreative act from the unitive act cannot be accomplished by two different married couples. The procreative act began and ended at conception when God infused the soul into the embryo.<sup>1</sup> At that point, a unique,

---

<sup>1</sup> Note that because we do not know with absolute certainty exactly when the soul is infused, we must always take the side of caution and assume it is at the moment of conception. This assumption seems more likely than ever to be correct given that we now know that at the moment of conception, the DNA blueprint for a unique individual is already fully present. It is only fitting that when God fashions the physical traits of a person, He would fashion the soul, too, for the human being is a body-soul composite.

differentiated, individuated human life exists, a body–soul composite that is ready for gestation. Those who argue that procreation includes not just conception but the whole process of pregnancy must logically conclude that you do not have a human person until gestation is over. That flies in the face of Catholic teaching on the personhood of the unborn. Such logic has horrible implications for Catholic teaching against abortion.

Others argue a related point that the generative and receptive roles of conjugal love are violated through EA. These roles were only violated when the sperm and egg were extracted and the embryo was created. The question at hand is, are they violated when the embryo is implanted? The terms generative and receptive have broader meanings in the marital relationship and in broader theology in the relationship of grace between Christ and his Church, but in this context I am specifically referring to generative and receptive in terms of sexual mechanics. I would argue that these roles, in the context of the marital act, are not applicable to HET and thus they cannot be violated. Just because a catheter enters the mother to deliver the living embryo to her uterus, does not make the procedure a perversion of the receptive role in intercourse. In intercourse, the receptive role is to receive sperm which will possibly fertilize the egg that may be coming down the fallopian tube. In EA, no sperm are received. Rather, a complete person is placed into the uterus so that he or she can survive. In intercourse, the fertilized ovum never enters the uterus until long after the conjugal act is over.

Furthermore, EA did not damage our marriage. It did not violate the nuptial meaning of our bodies. Our bodies reflect our ontological complementarity as man and woman. Our bodies reflect our generative and receptive roles and the nature of marriage. Our bodies are made to come together in self-donating love in a way that images the communion of Persons in the Blessed Trinity, a love that could sometimes be blessed with the creation of a third person. In no way were any of these tenets of the Theology of the Body violated by embryo adoption. A new person had already been created, and through a deliberate act of the will we became parents of that child, through each other in a spiritual act of love. My wife gave of herself a home for that child, and I, through my role in the discernment, and as supporter and comforter for my wife, gave of myself too. We made this decision together and together we adopted our embryos.

I think that the discernment process strengthened our marriage as did the embryo adoption itself. The togetherness of the pregnancy strengthened our marriage. The knowledge that we were saving a life and bringing a new child into the family strengthened our marriage, and of course children are always a bond that strengthen a marriage. The discerning process made us open and honest with each other. This was not something on which we could agree to disagree. We needed to come to a unified mindset. We needed to be humble together and admit we did not know everything. We sought out help and advice from faithful, orthodox Catholic priests. The joint humility we felt in seeking the truth imparts a togetherness all of its own.

Our embryo adoption was a moral act because together we were saving a life, giving of ourselves both physically and spiritually by this transfer, and accepting a gift from God and becoming parents. Those who oppose EA tend to see the

fundamental question only in terms of the alleged violation of the marriage bond, while subordinating cryopreserved embryos' moral claim to the right to life. They focus on the heterologous embryo transfer only as a physical procedure while failing to consider the parents' spiritual commitment to adopt, which elevates the act to a moral, possibly heroic status. They seem to be arguing in the abstract while forgetting that we are talking about real persons who really exist and need to be loved. So the question is not just, "is it morally permissible to put the child in my wife's womb or is putting him there violating our marriage?" Of course, that question does need to be answered. Jesus was a person who already existed and the announcement the angel Gabriel gave to Mary and to which she gave her fiat was, "this person will be in your womb." Jesus was not St. Joseph's biological son. Jesus was not conceived through the marital act. Jesus was not the offspring of Mary and Joseph's marriage. Mary became pregnant without the marital act. While truly an exceptional case, I do think that the Holy Family does shed some light on the morality of EA. Mary gave her womb as a tabernacle for Jesus. Christ says that whatever we do for the least of these, that we do for Him. Certainly there is no one more "least," no person more slight(ed), than a human embryo.

### 3 The Status and Dignity of Adoptive Fatherhood

I would humbly submit that in this way, my fatherhood as an embryo-adoptive father is somewhat like St. Joseph's fatherhood. While in modern times St. Joseph's fatherhood is usually cheapened with the application of the term "foster father," this just reflects a modern attitude which underestimates the reality of the bond of adoptive parents and their children. When Mary became pregnant with Jesus, it was not through the marital act. Joseph was not playing a generative role. Jesus already existed as a person and needed an earthly family and a womb from which to be born. This was God's plan and while it is truly an exceptional plan, Jesus is no ordinary man, Mary is no ordinary mother, Joseph was still an ordinary father (though very holy) and a very real father to Jesus. Yes, Jesus' "capital-F" Father is His heavenly Father, but Jesus' earthly father was Joseph.

Through EA, in a deliberate act of the will and a conscious choice to accept and love this child, I received a new son into my family. Yet some would call into question the fullness of my fatherhood over this child. The problem with such arguments against EA is that they also undermine the legitimacy and value of traditional adoption. Adoptive fatherhood is true and complete fatherhood, lacking nothing spiritually.

Adoptive fatherhood is modeled on spiritual adoption. Spiritual adoption provides a higher, more complete form of sonship, Divine Sonship, than does our natural sonship to God as Creator. Before we are baptized we are natural children of God through our ancestry to Adam. When we are baptized in Christ we become adopted sons of God. This adoption gives us spiritual Sonship in which we participate in Christ's relationship to the Father as His Son. This is an infinitely greater bond, one

that can save us spiritually, whereas being natural children of God does not save us spiritually because we are still under the bond of Original Sin. Therefore, in the spiritual order, adoption is how God the Father truly becomes "Our Father" in the fullest sense. All earthly fatherhood is an imperfect reflection of the divine Fatherhood of God the Father. Adoption, then, is as true and full a form of fatherhood as biological earthly fatherhood, for it is directly modeled on spiritual adoption, which is how we relationally enter into Sonship under the perfect Fatherhood of God the Father. Therefore any argument against embryo adoption that devalues adoption in general is a deficient argument. Any argument that; (1) questions whether adopted children are truly children of their adoptive parents; (2) questions whether adoptive parents enjoy the fullness of fatherhood or motherhood; or (3) questions whether through adoption a woman truly becomes a mother, or a man truly becomes a father, questions too much (Cf. Tollefsen, Weaver and Brakman, this volume). Such arguments undercut the dignity and spiritual value of adoption as a whole. Those who would argue that the goods of parenthood itself, among others, are intended to be accessed only and exclusively through means of the conjugal act between husband and wife, are undercutting all adoption to the detriment of their case against EA.

I am a father to my embryo-adopted son. In fact, by going through 10 weeks of Bradley Method birth classes and then by being my wife's birth coach for an unmedicated birth, I was highly involved in bringing this child into the world. Of course, involvement does not equal morality (a husband could be equally involved in a strict IVF pregnancy), but I am now speaking to the argument that EA isolates the father as an outsider. What I am saying is that I do not feel as if I were an outsider in the process. Some would say that as the husband in EA, I was sidelined – an unnecessary outsider to the process. This is not true. I never felt as if I were sidelined in becoming a father to this child. I played an active role in the entire process.

My role in EA began as we first began discerning God's will for our lives in the vocation of parenthood. And in that process, much the same as the case of most parents, we wanted to be open to life even if the gift would be given in an unconventional way. In distinction from IVF, we were not discerning whether or not to create new life artificially. I was actively involved in the discernment process. I learned about the opportunity and I was actively discerning God's will for our life and whether or not our intention was pure. Due to the lack of Church teaching on the issue, I was discerning the morality of the act myself. No one has the right to have a child. And we discerned very carefully our intentions to make sure they were pure and that we were not acting out of a mindset of entitlement. My role in EA is similar to the role I played in traditional adoption, which is also a very long and difficult process.

During the actual HET procedure, I was fortunate to be allowed in the room and I would encourage that to become an accommodation made by all doctors who perform embryo transfers, since it is not always the case. Because I was there, I was at my wife's side, holding her hand, offering her comfort, love, and support. During my wife's pregnancy, I experienced what every other father would, experience. I listened to the heartbeat, watched the sonograms, cared for my wife, and helped

her in times of discomfort. I talked to our baby in utero and prayed for him. I also participated in helping sustain the pregnancy over and above what a normal father would do, and in doing so certainly made up for any participation that some would say could be lacking (I am not granting their premise). I was the drug czar, administering daily hormonal injections. I participated in more frequent prenatal appointments and the usual care and pampering expected of a husband whose spouse is pregnant.

In the matter of family relationships, some EA opponents would argue that the mother, carrying the child, has a bond with the EA child, but the father, having no biological or genetic relation, does not. There is always a connection, a relationship between mother and child that is not there between father and child because the mother carried the child in her womb, but there is parity for us because our EA child was not genetically related to either of us, and also by virtue of our shared commitment to be his parents. EA is not adultery or some other abuse such as surrogacy, donor egg, or donor sperm. It is adoption. I am not “bothered” that there is a biological relationship between my wife and the child. There is a stronger biological connection between all mothers and their children.

In fact, EA has made me feel more of a father even to my first son who was adopted (in the traditional sense) at the age of four. EA has enhanced my fatherly awareness and instincts. I can take these experiences of having a baby and vicariously apply them to my older son. It enhanced my ability to bond with my children. It has helped me absolutely in seeing the total dependence of this baby on us for life. It has helped me to live more selflessly and in a self-giving way. Seeing the innocence of this child who can really do no wrong, has also helped me see the innocence of my older son, who while not culpable because he’s not at the age of reason is very capable of doing the wrong thing. Furthermore, it has given me more patience with both of my children.

Finally (and this is a purely emotional observation which I thus give the least weight), the arguments against EA tend to be so depressing, so saddening, that I cannot possibly believe the Church would advocate them. So many EA opponents conclude that the only moral option is to allow frozen embryos to die. This is too similar to the choice of the priest and Levite in the story of the Good Samaritan, to leave the helpless victim for dead and stay on the other side of the street. The Church always puts forth her teachings on life and love in a beautiful and uplifting way, such as in *Humanae Vitae*. I cannot see the Pope advocating a “leave them for dead” mentality as a solution to the EA debate. Jesus said he would not leave us orphans. This statement, with regard to the Church, speaks on another level to the plight of frozen embryos. They cannot be denied the opportunity and dignity of a chance to be born. The only moral response to a person is love.

# An Embryo Adoptive Mother's Perspective

Suzanne Stanmeyer

## 1 Introduction

The debate over embryo adoption is personal to my husband and me. On July 25, 2006, I gave birth to our son, Steven, 9 months after we adopted him. His conception had been orchestrated by his genetic parents through *in vitro fertilization* (IVF) some time earlier, but his life, previously in stasis, was entrusted to us by way of a closed adoption some 9 months before his birth. Steven is the only child *born* to us from embryo adoption, however, my husband and I consider that we are the parents of ten children. This is because prior to Steven's birth, we adopted a number of embryos but unfortunately pregnancies did not ensue. I would like to tell the story of how we decided to adopt and what it actually was like for us.

## 2 Thinking About Embryo Adoption

My husband and I are faithful Roman Catholics who have not conceived any children. When we initially thought about embryo adoption, we approached it with caution. We already had one child whom we adopted traditionally through an international adoption. Yes, we wanted to have more children and we were also deeply moved by the tragic plight of the hundreds of thousands of human beings brought into existence only to be left "on ice." Our view is that human life, and therefore personhood, begins at conception and yet the dignity of these humans is being violated by their being maintained without a chance to flourish as human beings. Given our situation as a married couple open to rearing and educating children, we decided we should explore the morality and permissibility of embryo adoption.

We approached embryo adoption with prayer and humility. We tackled the topic so as to gain a better understanding of how to go about building our family *within* the embrace of the Church. I was fortunate to have the benefit of a graduate degree in theology from the Franciscan University of Steubenville and fortunate to have a spouse pursuing the same type of degree from the Notre Dame Graduate School of Christendom College. Our training afforded us the ability to gather the appropriate

resources, the tools to engage in this analysis, and finally the opportunity to debate and discuss embryo adoption with scholars who were versed in the teachings of the Church. We made the decision to go forward with embryo adoption after 2 years of thorough research. We sought the advice of priests, family, friends, and Catholic theologians and all but one family member backed our decision. We believed, based on our research, that the Church backed our decision as well.

We decided early in our discernment that if we uncovered an argument that left room for doubt as to the morality of embryo adoption, we would not go forward with the adoption. We were not seeking a loophole to participate in otherwise immoral fertility procedures. We did not want to participate in an act that could compromise, or worse, destroy our marriage bond. Our decision to embryo adopt involved a thorough examination of Church teaching regarding assisted reproductive technology (ART), adoption, and specifically, the ongoing theological debate over embryo adoption (EA).

It seemed to us that two opposing views have emerged in the debate over EA. Those against EA conclude that there is a conflict between the moral order and EA that cannot be rectified. More specifically, most who oppose EA are opposed because, at the heart of the matter, they believe there is something intrinsic in the act of EA that is in direct violation of the sanctity of marriage. Proponents of EA conclude that the marriage vs. life argument is a false dilemma and that the two can come together in a moral way. Because the objections were so vital in helping us come to our decision to adopt, I'd like to examine several of the objections that stood out. I consider here the three objections that we focused upon: (1) EA is wrong because it is a form of surrogacy; (2) EA scandalizes others; and finally, (3) EA is immoral because it perverts the marital act.

## 2.1 Surrogacy

The surrogacy argument struck me as inaccurate since surrogate motherhood is commonly understood to mean that a woman, other than the genetic mother, makes a contractual agreement to gestate another couple's IVF embryo (or to receive artificial insemination from the genetic father) and then, once the child is born, return the child to his or her genetic parents. *Donum Vitae* defines surrogacy in this way.<sup>1</sup>

---

<sup>1</sup>“By ‘surrogate’ mother the instruction means: 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 and 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” (Congregation for the Doctrine of the Faith [CDF], 1987, II.A, no. 3.).

Couples who adopt embryos neither agree to participate in the creation of human life through IVF nor have decided to conceive a child outside of the marital act. They also do not agree to surrender the child to another party once the child is born. Couples who adopt embryos agree to participate *in an adoption* and become that child's parents.

Opponents of EA argue that embryo adoption is an affront to the woman's dignity because it objectifies her and uses her reproductive capacities as a surrogate. She becomes an incubator. In true surrogate motherhood, the surrogate mother abuses her own capacity for motherhood by deliberately becoming pregnant with a child that she has no intention of mothering. Surrogacy is a violation of the human dignity of the woman herself. Even if surrogacy is chosen by a woman for "good" reasons, she is necessarily treating herself and her reproductive capacities as an instrument for the benefit of other adults who wish to become parents. However, this was not my experience with EA. There is a great difference between offering one's body to be used as a surrogate versus offering one's life as an embryo adoptive mother does. The woman in the case of EA is not treating her reproductive capacities as an instrument to allow the creation and gestation of a child for the benefit of other adults. Rather, she is offering herself as a whole person (not merely a womb) to the already existent child for the rest of her life. To reduce EA to a mere physical act is to diminish the reality of what embryo adoptive parents really do. The embryo adoptive couple is not dominating life or reproduction. Rather, they are submitting themselves in humility to an *adoption* that peripherally involves a scientific act – a scientific act that can also be a component of the IVF procedure.

The act of EA recognizes the value and dignity of all human life and respects all aspects of reproduction. Adoption recognizes the personhood of the embryo and in doing so *restores his dignity*. Also, implanting an embryo inside his mother's womb, whether she is his genetic mother or his adoptive mother, restores his integrity by removing the embryo from stasis to resume the natural path for life that God intends for all human beings. Up to the point of the adoption, the embryo has been manipulated and objectified as a thing that serves the purpose of the genetic parents. Embryo adoption ends the manipulation and objectification by recognizing the embryo as a person. EA restores integrity to the embryo after the violation of natural law that occurred in IVF and becomes a heroic act in much the same way that traditional adoption is. That is not to say, as some mistakenly interpret, that adoption itself is a higher good than biological parenthood, rather it is a special circumstance wherein God provides grace.

## 2.2 *Scandal*

Scandal is another argument that raised questions, some of which are ably discussed in this volume by Brown and Eberl. I will give just a few thoughts here. If we became involved with EA, could we be seen as being complicit in or condoning



IVF? Could IVF be seen as beneficial since it was providing a path for Catholic couples like us to become pregnant? Could our actions lead to the manufacture of human embryos specifically for adoption?

To the first two questions, the answer is no – no more than a couple who adopts a baby conceived by rape condones the rape. Rape is not seen as beneficial because it provides a child to an adoptive couple. Rape is abhorrent and gravely immoral, but at times God chooses the rape as an occasion to give the gift of life. With EA, the gift of life has already been given. Embryo adoptive couples are entrusted with a life, or several, to care for as their own.

Secondly, our participation in EA has not led others to conclude that IVF is a moral good. We have been able to use the occasion of our EA to educate others on why IVF is so wrong. It is wrong that a husband and wife would try to dominate God's intended creative process for union and procreation. It is wrong to freeze human beings. It is wrong to conceive excessive numbers of human lives and then pick and choose "the best" or "the most fit" and discard or freeze the remainder. We have been very careful to guard against scandal and are quick to correct anyone who assumes we have participated in IVF and educate them on Church teaching regarding IVF.

### 2.3 *The Marital Act*

The third critique to EA – that it perverts the marital union – is the most serious criticism of EA, and the one we thought and prayed about most. Our intent was not to become pregnant outside of marriage, apart from one another. Our intent was to adopt a human person, not to create a human person. Once adopted, that embryo became our child. My husband and I are mother and father through each other by the decision we made to adopt. In a Catholic understanding of adoption, the husband and wife together must decide to adopt. *They become parents through each other by that mutual decision to adopt.* It is entirely different than the decision mothers and fathers make to dominate nature and participate in IVF because we did not choose to create a life outside the marital act; rather, we chose to sustain a life. That is an important distinction – creation versus sustaining.

Some like Fr. Tadeusz Pacholczyk and Catherine Althaus argue minute points on when procreation takes place and for how long the process of procreation lasts.<sup>2</sup> I believe they are missing the point. EA is not about procreation or conception or creation. It is about sustaining and nurturing life, and while the means are extraordinary, that does not make the act immoral.

---

<sup>2</sup>For an elaboration of these arguments, see C. Althaus, this volume, and T. Pacholczyk, this volume.

I see no evidence that EA violated our marital union; in fact our union was strengthened. After deciding to adopt embryos, John and I found that our marriage was renewed. Even in the embryo adoptions that failed to result in a viable pregnancy, we leaned on each other. With the pregnancy, an even greater change came over our marriage. We found ourselves full of hope and so absolutely joyful that God had blessed us with another living child. To be sure, some couples who have gone through IVF could claim this. But with our EA, there was a change for the better in us that is reflected in our lives, most specifically, in our relationship with one another. I know that I find myself in prayer more often through the course of the day and I have redoubled my efforts to be a holy wife and mother.

My husband and I were not persuaded by the marital union argument because we did not agree that the good of the embryo was necessarily trumped by the good of marriage. We also did not agree that the act of the embryo transfer was a moral evil. We read several passages from different Catholic sources that pointed us toward a greater understanding and appreciation of the value and dignity of the embryo and the absolute right to life for all human beings from the point of conception. Incidentally, never once is it mentioned that the right is only extended to embryos conceived in a natural environment, as Fr. P. Acholczyk (this volume) submits.

The Congregation for the Doctrine of the Faith in the Declaration on Procured Abortion shared a statement from Tertullian that was extremely helpful to us in our discernment process. "To prevent birth is anticipated murder; it makes little difference whether one destroys a life already born or does away with it in its nascent stage. The one who will be a man is already one" (CDF 1974, para. 5). Even though this quote is cited by the CDF to show the Church's ongoing and ancient belief that abortion is always wrong, Tertullian's wording was helpful to us in this debate. What happens if we do not allow these embryos to be adopted? They are prevented from being born and in preventing birth, we are willing death. It is murder as Tertullian explains, and we agree.

We were also given hope and encouragement in Pope John Paul II's homily during the celebration of the Jubilee of Families given on Sunday, October 15, 2000. The Pope stated:

It is in children that marriage blossoms: the y crown that total partnership of life (" *totius vitae consortium*": CIC, can. 1055, 1), which makes husband and wife "one flesh"; this is true both of the children born from the *natural relationship* of the spouses and those desired through *adoption*.... Above all, it addresses the right of children to be born and to grow in a context of fully human love. (John Paul II, 2000, para. 5)

I understand that this is not a binding decree or an *ex cathedra* statement but I appreciated two things. First, the Holy Father specifically included adoptive parents in his statement and says of them that children brought into the family through adoption "crown that total partnership of life which makes husband and wife 'one flesh'" just as children brought into the family from a natural relationship do. Second, he says that it is *the right of children to be born*. I understood this statement to be a further explanation of what the Church means when she declares that

everyone has a right to life. An inherent part of that right to life is a right to be born. It seemed to me at the time, and even more powerfully now that we are the adoptive parents of two children, that participating in EA is not detrimental to our spiritual life or any other aspect of our life. In fact, both adoptions have helped our marriage “blossom.”

There is one last point regarding the violation of the marital union that I would like to address. Opponents state that the act of deliberately becoming pregnant with a child that is not the fruit of the marital act is evil. Therefore, they argue that since one cannot do evil to achieve good, EA is not permissible. I strongly disagree with the claim that it is evil in all cases for a woman to become pregnant outside the marital act. There is a text in *Donum Vitae* that implies that, once the embryo exists, it is actually permissible for a woman to become pregnant by way of embryo transfer: “Although the manner in which human conception is achieved with IVF and ET cannot be approved, every child which comes into the world must in any case be accepted as a living gift of the divine Goodness and must be brought up with love.” (CDF, 1987, II.B., no. 5). The quote states that *conceiving* through IVF and ET cannot be approved by the Church. However, it also states that once the embryo exists, it must be “brought up” which seems to be implicitly approving embryo transfer for the purpose of saving the life of the embryo.

A second quote from *Donum Vitae* (CDF, 1987, I, no. 1) implies the same: “since the embryo must be treated as a person, it must also be defended in its integrity, tended and cared for, to the extent possible, in the same way as any other human being as far as medical assistance is concerned.” Note that the phrase “to the extent possible” refers to medical possibilities, and does not imply a moral constraint (i.e., it does not say, “to the extent *permissible*”). This quote states to the extent it is medically possible, the embryo “must be treated as a person, ” “tended and cared for.” The authors of *Donum Vitae*, while condemning *conception* through IVF and ET, have not closed the door on women who would become pregnant by way of EA.

## **2.4 The Existence of the “Natural Environment”: Saving Embryos from an “Absurd Fate”**

Aside from the specific arguments that I cited above, one of the biggest problems we had with the arguments opposing EA was the “solution” to the problem of what to do with the “leftover” embryos. Some who challenge the good of EA propose – since they believe the embryo transfer itself is gravely immoral – that the best solution to “restore” dignity to the embryo is to allow the embryo to perish either by thawing and rehydrating the embryo and then leaving it out in the laboratory to die or by allowing it to perish in extended stasis and then disposing of it. My husband and I could not understand how these “solutions” work to restore or even recognize the dignity of human life.

We all agree (those for and against EA) that embryos are fully human. They are not potential life or mere “blueprints.” We also agree that embryos, like all human beings, have a right to life. They cannot sustain themselves in a Petri dish any more than a newborn baby can sustain herself if left on the side of the road. Consider the human embryo who is left to die on a countertop has not been returned to his natural state or natural place. His life cannot be sustained in any way without proper care. That care happens to be available only in his mother's womb. The embryo cannot feed himself, protect himself, or regulate his own body temperature. He needs a certain, specific environment in which to grow and thrive. The environment he needs is that of a loving family, within the care of his mother and father.

Neglecting the embryo, refusing to replace him in his natural environment, the womb, is willing death for the embryo. The embryo's death is not an unintended, unfortunate consequence of leaving him in extended stasis or in a Petri dish in a lab exposed to the elements. The choice to leave the embryo to die is a deliberate one and the consequences of the act are well known. It seems to me that the opponents have taken the phrase from *Donum Vitae* “an absurd fate”<sup>3</sup> entirely too literally, and have created an absurd “solution” when a perfectly reasonable one exists.

Fr. Pacholczyk states in his chapter in this volume that embryos created in vitro are created outside of nature and therefore have no natural environment. I am not a scholar and perhaps I am missing Fr. Pacholczyk's point, but it seems to me that a human person – regardless of how natural or unnatural the events or situations surrounding his or her conception may be – has a natural environment. The embryo's natural place is determined by who he is, a human person, not by where he came from. An embryo is an embryo no matter how he or she was created, and the natural place for the embryo is his or her mother's womb, be it the genetic mother or adoptive mother.

Those opposed to EA conclude that the only morally licit option for the embryo is death. It is odd that Catholic moral theologians would propose a solution that many IVF couples, who do not see the embryo as a human person, already embrace. According to Althaus<sup>4</sup> and Tonti-Filipini,<sup>5</sup> couples who choose to thaw their

---

<sup>3</sup>“In consequence of the fact that they have been produced in vitro, those embryos which 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 safe means of survival which can be licitly pursued” (CDF, 1987, I., no. 5).

<sup>4</sup>“[W]e can release them from their cryopreserved state by replacing the cryoprotectant with the original level of water in the embryo, thereby allowing it to thaw. While this may have the indirect effect of death for the embryos (in the absence of gestational nutrition), such a choice is a life-giving one for the embryos, albeit for a very brief period of time” (Althaus, this volume).

<sup>5</sup>“Accordingly, the solution I would advocate for the plight of embryos kept frozen and anhydrous in embryo banks is simply that they be thawed in moist conditions (in which hydration and the removal of the anhydrating chemicals can occur), in order that they may be restored to their natural dynamic state, a state more fitting their sacredness as human beings than the state of frozen and anhydrous suspended animation. Those few days in which they would return to their natural state of growth and dynamism would constitute a rescue, albeit short-lived, because of the absence of any licit means ultimately of preventing death. Death would result because they would develop to a state of maturity in which their vital needs could not licitly be met” (Tonti-Filippini, 2003).

embryos and dispose of them are the ones making the morally sound decision, as opposed to those couples who have participated in IVF but who seek life for those embryos by way of EA.

Those who argue against EA have yet to provide a solution for the embryo that respects the embryo's dignity and right to life as a human being. Leaving a human being to die of exposure is not a morally acceptable solution. The alternative "solution" of leaving the embryo frozen indefinitely is also morally repugnant since it is a slight to the dignity of the human person and completely unnatural to leave someone in that state. Clearly, these options are violations of the embryo's dignity. On the other hand, EA is not a violation of his dignity.

## 2.5 *Additional Arguments*

Adoption, both traditional and embryo, is a humane answer to the problem of the pain and suffering that accompanies children who would otherwise be forced to live without parents. Ours is a fallen world; however, we are also a redeemed world. When genetic or biological parents fail their children or decide that they cannot provide for their children, we see the fallen aspect of the world. However, in the act of adoption we see an act of unselfish love, a redemptive love. That kind of love can heal pain and suffering. In the pre-natal adoption<sup>6</sup> of a human embryo, adoptive parents participate in an unselfish act of love toward their unborn children. To argue that the embryo transfer is not and cannot be an adoption, serves to cheapen the value of the embryo as a human being as well as the act of adoption.

Further, if EA is gravely immoral, many, many devout, practicing Catholics are coming to the wrong conclusion. In our own search for truth, the majority of our friends and family (those who are fully practicing Catholics) agreed that EA was a moral good – even a heroic act. Understanding that the Church is guided by the Holy Spirit and not by polling data, it is difficult for me to argue that EA must be right because nearly everyone we talked to, including several very devout priests, had a favorable opinion of it. I'm well aware of the approach many have taken in order to try to legitimize disobedience against Church teaching on contraception and immoral ART procedures based on "polling data" that shows most Catholics contracept or see nothing wrong with IVF.

---

<sup>6</sup>To my knowledge, prenatal adoption has not been widely treated or considered by opponents of EA. We adopted our son before the embryo transfer took place. In this way, he was our son prior to the transfer and we were acting to save our son's life with the action of the embryo transfer. While the law does not, at this point, recognize EA as such, the embryo was legally transferred to our custody in a transfer of property. Though it was not ideal, this is as close as we could come to a legally recognized pre-natal EA.

However I feel compelled to add that the vast majority of faithful (practicing) Catholics whom we know are concluding that EA is a moral good, and that is not the same thing as IVF. In Fr. Pacholczyk's chapter in this book, he quotes a father of six in an attempt to show that rank-and-file Catholics intuitively know that EA is wrong. My experience with rank-and-file Catholics has been quite the opposite. But we can probably both agree that is dangerous to point to the intuitions of individuals, even those properly catechized, as necessarily relating the truth.

### 3 Proceeding with the Process of Embryo Adoption

When we decided to move forward with EA, we were very selective in choosing an agency. We insisted that no genetic selection or exclusion be performed on any of the embryos, and that all living embryos be given a chance at life. I had read while doing my research, that doctors at fertility clinics are often selective about which embryos to transfer, preferring to transfer only the ones that appear healthiest. Since I believe, as the Church teaches, that all human life is sacred, I wanted to honor that belief by doing what we could to ensure our doctors and their staff were not going to practice eugenics on our embryonic children. We sought confirmation that the embryos were not manufactured expressly for HET/EA. While I believe that all life, once created, deserves to live, I also wanted to do what I could to make sure that my actions were not causing more embryos to be created. Adopting embryos specifically made for adoption came too close to the act of commissioning the creation of the embryos so we wanted to stay as far away from that as we could. We also wanted an agency that honored preexisting genetic bonds whenever possible, so that groups of genetic siblings could remain together. By insisting that genetic siblings be kept together, we were acknowledging that there is dignity not only in the individual embryo but also in the link they share with members of their genetic family. Their genetic identity will always be linked to another family. Maintaining the integrity of that family was an additional step we could take in our desire to restore dignity to the embryos.

Our embryo adoption proceeded similarly to our international adoption. We contacted the existing adoption agencies and choose the one we felt best matched our needs and expectations. We choose a pro-life agency that treated the embryo transfer as an adoption. We desired that our embryo adoption be closed (i.e., anonymous) since our first son's adoption was also a closed adoption. We thought it best at that point in time that our children have similar backgrounds in that respect. The agency placed us on a waiting list for closed embryo adoption and after about 6 months they contacted us with information on several families of embryos in need of homes.

The agency gave us only basic information on the genetic parents. We had no heart-warming pictures or stories about the families. There was nothing to set the families apart from one another, save the basic physical attributes of the genetic

parents. The agency also gave us a region of the country or sometimes a state where the embryos were from. We were not given any information about why these embryos existed. The agency did tell us that they would provide additional information like family medical histories before we made a final decision. We did not feel that was necessary though. We wanted to stay as far away from the “designer baby” mentality as possible. Also, when we adopted our first child internationally, we had so little information about his background that we had to put our trust in God and make a blind leap of faith. We decided to do that again.

The information provided to us about the genetic parents included very general physical descriptions, occupation, and education level. They were from different parts of the country, and none, to my knowledge, were created from fertility procedures our physician did.

Eventually, John and I choose our embryos in an unremarkable way. There was not an “undesirable” profile or an “undesirable” set of embryos and there wasn’t much to set the families apart, so we basically prayed that God would lead us to the right fit for our family. Then we based our decision on the number of embryos available (we want a large family and so we choose a family that had a large number of embryos) and picked the embryos that “felt right.” We also took the genetic parent’s height into consideration since John and I are both tall. It seems silly to admit that, and I want to emphasize that we were in no way trying to create a designer family. All other things being equal and with not much information to set the choices apart, height was just as good as any other feature to use to help us make our decision.

Prior to our transfer, our doctor prescribed estrogen supplements and Lupron injections in order to prepare my uterine lining for the transfer. A few days before the embryo transfer, I started taking progesterone shots. John, my husband, gave me all of my injections and was my partner in keeping track of my medication schedule. We also had a homestudy done which included several home visits with a social worker, police background checks and an exhaustive check into our personal lives. We signed an agreement with the physician performing the transfer not to participate in selective abortion should we become pregnant with more than one child. We were, of course, more than willing to sign this agreement; indeed such a requirement was one of the criteria we considered when choosing a truly pro-life EA provider.

On the day before the transfer, we flew to another city where the embryos and the reproductive endocrinologist were located. Different embryo adoption agencies have different requirements for travel and some none at all. We made our selection because we trusted the doctor who would be performing the transfer. Without any prompting from us, he promised that he would transfer all living embryos and would not “play God” by choosing only the healthiest embryos.

When we reported to the doctor’s office together, I was happy but anxious, even with the Vallium. Before each of our three embryo transfers, we were given pictures of our embryos and an update on how they were doing. Each time, John and I were very moved by the sight of our children. They were our little babies. The doctor and nurses left us alone and allowed us to share time together before the transfer took

place. Each time, John and I held hands and quietly whispered several decades of the rosary together for the safety of the embryos and guidance for the medical staff.

When it was time for our transfer, the medical staff wheeled me into the procedure room and John was lead off to change into scrubs. They prepped me for the transfer, then allowed John to join me. My husband stood at my head and we held hands, praying silently during the transfer.

I tried to go through each transfer with a sharp sense of the state of my soul as if I might be able to sense a mortal blow. I know that is not how God works, at least not usually, but I was acutely aware that we were either participating in a very good act or an evil one. I knew there was no gray area. However, there was no palpable spiritual revelation at the time. It was only after the transfer, once we came home and resumed our day-to-day life that I began to see a slow, subtle change for the better in the way I related to John as a wife who was now the mother of his children.

When the procedure was complete, the embryologist checked the catheter to make sure that all of the embryos had transferred. On our third and final transfer, one of the three embryos stuck inside the catheter and so the transfer had to be done again. I am eternally grateful to the doctor for his care and his respect for human life so that no embryo was neglected or left behind.

After the transfer, John gave me progesterone shots twice a day. I was instructed to take it easy for a day or so and then return to normal activity. Two weeks after our adoption, we had a blood test to confirm the pregnancy. The two weeks was an eternity and I just could not wait that long. So on Thanksgiving morning, about a week after the transfer, I took a home pregnancy test. It was positive. Our first embryo transfer had also resulted in a positive home pregnancy test. The positive this time was bright and, well, positive, as opposed to our first HPT, which was faint to begin with, and faded over subsequent days.

Our pregnancy progressed normally. John and I celebrated traditional pregnancy milestones, especially the viability milestone. Often John would fall asleep with his hand on my belly, both of us marveling at the baby's kicks. We had several emotional sonograms. Our first was bittersweet as we grieved the loss of Steven's two siblings, Scholastica and Benedict. We had hoped that all three would make it, but it was not meant to be. Our main sonogram, at 20 weeks, was also emotional. We were excited to find out we were having a boy. But the technician discovered that there was a small spot on our baby boy's heart. He thought there may be a problem. It turned out to be nothing, but the scare helped us further surrender to God's will.

I am not aware of any time when John and I thought, "We're having someone else's baby." We had adopted Steven and in our minds and hearts he was ours. There was never any question. There was no bitterness between John and myself, no fighting, no resentment. We prayed together for the safety of our baby, for all of the babies we lost, and for God to bless us with more children.

The pregnancy healed me and changed the image I had of myself as an incomplete, infertile woman. I did not feel forsaken by God anymore. I experienced this to some extent with the adoption of our first son, but it was not until I became



pregnant with Steven that total healing took place. As the pregnancy progressed, I felt competent, capable, feminine, and whole. I did not doubt my ability to parent. I bonded more completely with our older son. I felt a nurturing love toward him that I had not felt before. I became a better wife and mother.

I gave birth naturally, without anesthesia, and when Steven was born into the world I was flooded with joy. Of course, some of that comes naturally as a result of hormones, but there was something special beyond that. Here was our son, screaming and covered with dark hair. He was an eight-pound miracle who began his life in a Petri dish, had been frozen in a test tube and had lost two siblings in the womb. He survived the perils of being a “leftover” in a world where most “leftover embryos” are donated to science or thrown away. I cried for joy as our son was placed on my stomach.

Our family life is much changed with two children. Steven continues to grow and to charm people with his chubby cheeks and toothless grin. Our older son has embraced his role of older brother. He sings lullabies to the baby, tucks blankets around him, shares favorite toys, and has asked us repeatedly to bring him a baby sister *and* a baby brother the next time we come home from the hospital. My bond with both boys is strong. Even though I share a biological bond with Steven, my bond with our first son is no less strong. I love both of my boys and would give my life for them. As for our marriage, it is stronger than ever. John and I are very much in love. We sacrifice more for each other now, we have to, and yet we do not mind. This is our vocation and God has given us the grace.

## 4 Conclusion

The arguments regarding EA set in opposition the value and dignity of human life against the value and dignity of marriage. Those who view the act of EA in the negative conclude that the sanctity of marriage trumps the embryo’s right to human life. Those who view the act of EA in the positive conclude that the argument of marriage versus life is a false dilemma and that the two can be joined together to the benefit of all parties. The second approach is infinitely more Catholic, in my opinion, since it provides for the embryo and at the same time, strengthens the marriage bond through a virtuous act of self-giving love. The act of EA is not primarily one of making infertile couples pregnant, but one of sustaining a human life and welcoming that life as one’s own child.

## References

- Congregation for the Doctrine of the Faith (CDF) (1974). *Declaration on Procured Abortion* [Online] Available: [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_19741118\\_declaration-abortion\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19741118_declaration-abortion_en.html).

- Congregation for the Doctrine of the Faith (1987). *Donum Vitae (Instruction on Respect for Human Life in Its Origin and on the Dignity of Procreation: Replies to Certain Questions of the Day)* [Online]. Available: [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_19870222\\_respect-for-human-life\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19870222_respect-for-human-life_en.html).
- John Paul II (2000). *Jubilee of Families: Homily of John Paul II, Sunday 15 October 2000*. [Online]. Available: [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/homilies/2000/documents/hf\\_jp-ii\\_hom\\_20001015\\_families\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/homilies/2000/documents/hf_jp-ii_hom_20001015_families_en.html).
- Tonti-Filippini, N. (2003). 'The embryo rescue debate: Impregnating women, ectogenesis, and restoration from suspended animation,' *The National Catholic Bioethics Quarterly*, 3, 111–137 [Online]. Available: [http://www.lifeissues.net/writers/ton/ton\\_01embryorescue1.html](http://www.lifeissues.net/writers/ton/ton_01embryorescue1.html).

# Ethical and Religious Directives for a Catholic Embryo Adoption Agency: A Thought Experiment<sup>1</sup>

John Berkman and Kristen N. Carey

## 1 Introduction

At present, there is to our knowledge no Catholic institution engaged in overseeing the practice of embryo adoption (EA), nor any institution that currently oversees the practice explicitly claiming to do so in accord with Catholic ethical and religious principles. On the one hand, this is understandable, since the Catholic Church has yet to rule on the moral permissibility of the practice. On the other hand, this is somewhat surprising, since the Catholic tradition is arguably the most vociferous advocate of the dignity and rights of cryopreserved embryos. For many cryopreserved embryos, adoption represents their sole opportunity for continuing the human life cycle to which they are by nature ordered. Thus, one might expect some Catholic institution to inaugurate a program to aid such embryos, assuming EA does not come to be seen as incompatible with Catholic morality. In this essay, our goal is to provide a vision and a framework for the institutional oversight of the practice of EA done in accord with Catholic teaching.

Towards this goal of providing direction for an EA agency guided by a Catholic Christian view of the human good and the common good of society, the essay proceeds in four parts. It begins with a brief background on the recent moral debate over EA among Catholic theologians, noting both the strengths and limitations of the debate as it has proceeded to date. This section also notes how EA has recently stumbled into the cultural limelight, having a prominent place in the recent “culture wars.” The essay continues with a presentation of the specifics of the practice of EA as it presently practiced in the USA, at least by those agencies which make their practices public. The third section presents a vision for a virtuous institutional practice of EA, seeking to move beyond a moral analysis that concludes that EA is merely “morally acceptable in certain circumstances” to one in which the practice can be seen as exhibiting the virtues of solidarity and charity, providing the gift of

---

<sup>1</sup> Although this will be obvious to many readers, the title alludes to the USCCB’s *Ethical and Religious Directives for Catholic Health Care Services*, published by the US Catholic Bishops. This pamphlet-sized set of ethical directives, the fourth edition of which was published in 2001, serves as an institutional guide for Catholic health care services in the USA.

continued life to many embryos and expressing a will for a more just social order. In the final section, we offer numerous practical suggestions for guiding the practice of an EA agency which seeks to fully honor the dignity of every human embryo, to efficiently and compassionately aid couples and individuals who wish to adopt an embryo, and to serve the common good by both constructively addressing the moral perplexity of the situation and advocating a morally upright amelioration to the social injustice embodied in the suspended existence of hundreds of thousands of human embryos.

## 2 Background

Among theologians and philosophers writing out of the Catholic tradition, there has been considerable debate over the last decade about the morality of EA. For the most part, the debate has focused on the moral permissibility of a woman's having an in vitro embryo transferred to her womb (ET) that she will attempt to gestate to birth. The debate typically assumes that the woman is not a genetic parent of the embryo, which is specified by the phrase *heterologous* embryo transfer (HET). Two key questions have been at the center of the debate. The first is whether a woman's choice to gestate the embryo morally entails a choice to adopt the embryo (as opposed to rescuing the embryo by gestating it with the plan to place the child for adoption at birth). The second is whether the choice to transfer and gestate the embryo is morally incompatible with Catholic teaching on marriage and marital sexuality and thus intrinsically immoral.

Of these two questions, the second asserts itself as prior to the other questions taken up in this essay. For if convincing arguments were to be presented that EA is intrinsically immoral, then the moral ground of this essay has been undermined. However, this is a minority view among Catholic ethicists who engage the question, and we find these arguments unconvincing.<sup>2</sup> However, some who consider the practice acceptable *in principle* are reluctant to approve of it *in practice*. Why? Some imagine that the practice would only be handled by practitioners who are typically engaged a variety of morally problematic practices (e.g., the destruction of human embryos, in vitro fertilization [IVF] and/or related procedures) and that those pursuing EA should not work with such practitioners, thus ruling out EA in practice. Others present anecdotal evidence that some institutions which provide EA services are also engaged in other practices they consider morally problematic.<sup>3</sup>

<sup>2</sup> Examples of this view are the essay by M. Geach (1999) and the essay by T. Pacholczyk (this volume). A critique of this view can be found in J.R. Berkman (2006). 'Virtuous parenting and orphaned embryos,' in T.V. Berg & E.J. Furton (Eds.), *Human Embryo Adoption: Biotechnology, Marriage, and the Right to Life* (pp. 13–36). Philadelphia, PA: The National Catholic Bioethics Center.

<sup>3</sup> One examination of practices that seem problematic can be found in J.R. Berkman (2002). 'Adopting embryos in america,' *The Scottish Journal of Theology*, 55, 438–460.

Stempsey (this volume) exemplifies a common skepticism about the possibility of “doing it right” when it comes to EA. One compelling reason for providing an institutional guide for the oversight of EA is to aid the founding of an institutional setting where those who wish to adopt an embryo may do so knowing that those overseeing the practice are avoiding the kinds of practices (e.g., eugenic screening of embryos, implantation of inordinate numbers of embryos) that have been objected to by some who approve of EA in principle.

A number of authors writing on embryo adoption raise moral concerns (e.g., cooperation and/or scandal) about EA – completely legitimate objections and which are ably discussed in this volume by Stempsey and Eberl and Brown. However, the way in which these concerns usually are raised reveals what we regard as a lacuna in the ongoing debate on EA. The debate has remained largely abstract, focusing on a variety of problems that *can* or *might* occur. While the existing analysis has been interesting and significant, it has little connection with EA as it is currently practiced in the USA. By presenting a description of actual current practice of EA, and providing a vision for and practical suggestions towards more morally satisfactory practice, we hope to bridge the current gulf between typical moral analysis of EA and the practice of it as typically goes on in the US context.

Three additional points require mention. First, we understand our project is likely to be seen as connected to the major cultural controversy over the use of embryonic stem cells. Although our interest in and work on the question of EA predates US President George Bush’s 2001 announcement prohibiting federal funding for research which involves the destruction of cryopreserved embryos, it is inevitable that advocating for adequate care and concern for such embryos will be seen as part of a larger political agenda. To the extent that this distracts from the issue at hand, that is unfortunate. Second, there is some reason to believe that because of a variety of laws and regulations that have been or soon will be enacted, EA may soon be made bureaucratically onerous (Hoffman et al., 2003, p. 1063).<sup>4</sup> We believe that this would constitute a further grave injustice to the existing cryopreserved embryos, and would advocate for public policies that consider first and foremost the good of these embryos. Finally, as has been noted by Lauritzen (this volume), for example, the debate regarding EA has been

---

<sup>4</sup> As of May 25, 2005, the FDA approved a surprising new set of regulations, which might have undermined EA in the future (<http://www.asrm.org/Media/FDA/may05tissueregulations.html>). The regulations originally stipulated that if a couple plans to donate their remaining embryos after their own use, they must complete an extensive medical history and infectious disease screening before they even begin the process – at additional expense to them. This would have rendered embryos created with donor gametes largely ineligible for the process. As Cheely states in this volume, “After the ART community expressed concern and before 21 CFR Part 1271 went into effect, the FDA relaxed this requirement in an Interim Final Rule, which also became effective May 25, 2005” (p. 280).

largely an intramural Christian debate, for the most part engaging only a narrow cohort of Catholic and Evangelical groups and intellectuals (see, however, Gregory, this volume, p. 220). Our hope is that a morally fitting, functioning Catholic EA agency might help bring this issue more clearly and forcefully into the public imagination, and help contribute to a broader conversation about the inherent dignity of human embryos.

### 3 Contemporary Embryo Adoption: A Descriptive Analysis

Although most of the literature on the morality of EA focuses on abandoned embryos, it would seem that a sizable number of embryos that are adopted in the USA in fact involve the active participation of both adopting and relinquishing parents. These adoptions take place in a number of different institutional contexts. Some are done by mainstream IVF clinics, which make arrangements between couples who have embryos they wish to relinquish stored at that clinic and couples who wish to adopt them. We are not aware of any published statistics indicating the number of these transfers which take place each year. Most transfers are anonymous and handled entirely by the IVF clinic. Selection is allowed usually by the adopting couple only, although some places allow the donating couple to give a few broad specifications. The adopting couple (or single woman) is generally not required to meet any criteria beyond medical eligibility. A recent study indicates that 72% of surveyed infertility clinics offer embryo transfer services, and 37% have completed a transfer (Bankowski, 2005, p. 826). Lastly, since the mid-1990s, a number of institutions specializing in EA have been founded. This section will examine the practices of three programs specializing in embryo adoption: Snowflakes Frozen Embryo Adoption; Embryos Alive; and the National Embryo Donation Center.<sup>5</sup> As we shall see, these three institutions share a number of practices, and all model their practices to a greater or lesser degree on those of traditional adoption agencies.

Perhaps the most well known of the agencies specializing in embryo adoption is Nightlight Christian Adoptions (NCA), whose embryo adoption program is known as Snowflakes. NCA, based in Fullerton, California, has been facilitating embryo adoptions since 1997, and gained fame in 2001, when President George W. Bush shared the stage with 17 children who were adopted as embryos when he limited federal funding of stem cell research to 60 existing stem cell lines (<http://www.whitehouse.gov/news/releases/2001/08/20010809-2.html>), arguing that such

---

<sup>5</sup>Unless explicitly cited otherwise, all factual information on Embryos Alive, the NCA, and the NEDC comes from their websites: *Embryos Alive* (2006). [Online] Available <http://www.embryosalive.com>; Nightlight Christian Adoptions (2006). *Snowflake Adoption Program* [Online]. Available: [http://www.nightlight.org/snowflake\\_adoption.htm](http://www.nightlight.org/snowflake_adoption.htm); The National Embryo Donation Center (NEDC) (2006). [Online]. Available: [http://www.embryo\\_donation.org](http://www.embryo_donation.org).

cryopreserved embryos should not be destroyed for experimental purposes, but instead should be adopted. It is also one of the largest agencies in terms of number of children born from the procedure: 99 as of 2006. Snowflakes vacillates between calling the embryos “frozen embryos” or “pre-born children.” Genetic parents are said to “relinquish” their embryos to an adopting family to give these pre-born children their “deserved” chance at life. The Snowflakes program follows the same protocol for EA as NCA does for other traditional adoptions, which is also offered through its agency. The agency is flexible with regard to the degree of openness of the adoption per mutual agreement of donors and recipients, but some version of an open adoption arrangement is required. At minimum, this means that donors and recipients exchange letters, biographies, and photos. The philosophy behind open adoption is: that donating parents are provided with piece of mind knowing their child is with a family of their choice, and that children know their heritage. Additional contact is then determined by mutual agreement and may be direct or agency brokered. Adopting couples are responsible for all fees, including the agency fee, home study, fertility clinic fees, and any expenses of the donating couple directly relating to the pregnancy, which the organization estimates run anywhere from \$11,000 to \$18,500. This number does not including shipping fees (\$500–1,000), or medical expenses relating to the thawing of the embryos, or the medications and preparations for implantation for the adopting woman – which Snowflakes estimates to range from \$2,000 to \$7,500. Thus, the total fee for an embryo adoption could range from \$13,500 to \$27,000.

The Snowflakes program requires that donors submit a profile, medical information and embryology reports, and their preferences for an adoptive family. It also requires that adopting couples meet medical and social eligibility criteria. Adopting women must have a doctor’s evaluation, certifying good health and verifying the absence of contraindications for pregnancy. In addition, the Snowflakes program encourages couples to have been married for a minimum of 3 years. NCA also permits single women (but not men because this would require surrogacy, which the agency does not support) to participate in embryo adoption. However, NCA cautions singles that their donors often prefer to donate their embryos to married couples. Along with their application, the potential adopting couples submit a “Dear genetic parent” letter and photo collage, which introduces them to potential relinquishing parents. Relinquishing parents are then at liberty to choose to whom they wish to relinquish their embryos. Although the profiles of persons who wish to adopt are not online in the Snowflake programs, NCA posts the profiles of couples seeking a traditional domestic adoption online, along with pictures, a “Dear Birthmother” letter, and personal information about the prospective adopting couple – from financial information to descriptions of pets.

The development and procedures of The National Embryo Donation Center has been addressed by Dr. Jeffery Keenan in this volume. For the purposes of comparison, the NEDC was founded in 2002 with the goal of blending a traditional adoption agency and infertility medicine in order to create an integrated approach to EA that is “as practical, economic, and as emotionally acceptable as

possible for both embryo donors and adopters” (Keenan, this volume, p. 223). Keenan notes that one of his goals is to create a “life-honoring organization” which “reduces barriers” in the practice of EA. The NEDC had performed approximately 80 “transfers” by the end of 2006, with a pregnancy rate of approximately 42% (Keenan, this volume). The center is flexible in allowing any number of open or closed transfer arrangements, again per mutual agreement of the parties involved. Unlike the NCA, the NEDC does allow anonymous donation and adoption. Together, donors and recipients may determine the number of times per year they will communicate, the method (telephone, email, letter, etc.), medium (direct or agency brokered), and the type of information communicated (solely medical or information about the child’s life and activities.) The NEDC does mention the lower cost of EA as an advantage of traditional adoption, and estimates the process runs \$4,350–5,650, not including medical and possible “additional costs” of up to \$1,150.

The NEDC allows “genetic” or “donating parents” to impose whatever stipulations (including state of residence and religious affiliation) they wish on “recipients” or “adopting families.” Their justification for this policy is that they believe it leads to a greater number of embryos being adopted. In their literature, NEDC refers to embryos as “unused” embryos, or as “fertilized eggs.” The NEDC’s only requirement of donating couples (or single persons) is that they complete a medical and genetic screening to determine eligibility to the program, and to provide a genetic history for the embryos. In order to encourage more genetic parents to consider donating their unwanted embryos, the NEDC web site appeals to the experiences of donors with their own infertility, asking them to give their embryos “a chance for life,” and to give recipient couples an “opportunity to have children” – a win-win situation. The NEDC’s requirements for adopting couples are more exacting. The NEDC requires adopting couples to be married and under the combined age of 100. Adopting couples must complete a home study, along with an emotional, psychological and financial assessment. Counseling is provided, as well. Preference is given to childless couples with no previous children. Profiles of prospective adopting families and of available embryos are password protected, but available online once a donating or recipient couple has initiated the process.

The NEDC also appeals to other fertility clinics on its web site, asking them to send embryos to the center, where the NEDC has the mechanisms and resources in place to ensure efficiency and efficacy. Couples adopting through the NEDC must use one of the center’s affiliated fertility clinics and these clinics give discounts to couples using EA (Keenan, this volume). The NEDC allows a maximum transfer of two to three embryos per attempt, with no possibility of selective reduction. It is also one of the few places allowing mixed embryo transfers, meaning embryos from multiple donating parents. Adopting couples are allowed three embryo transfers, if selected to receive relinquished embryos. Embryos are not selected on the basis of any quality assessment, although all embryos which enter the program are assessed to ensure that they retain the capacity to grow and divide.



Embryos Alive is the second oldest EA agency in the USA. Based in Cincinnati, Ohio, the organization's slogan is "matching donor embryos with adoptive families everywhere." Embryos Alive describes EA as akin to traditional adoption, but it saves "time and financial resources." As of late 2006, the agency has had three successful births and twins are expected in January 2007 (Bonnie J. Bernard, Executive Director, 2006, personal communication). At various places on the web site, embryos are termed "embies" and "little ones waiting to be born." They are formally defined in the legal agreement between donating and receiving families as "pre-born children who are endowed by God with unique characteristics and are entitled to the rights and protection accorded to all children, legally and morally." Embryos Alive also offers open (one successful to date), agency liaison (two successful to date), closed and anonymous donation (one successful, to date). The organization estimates the typical cost of EA as: \$2,950 in agency and matching fees, \$500 per embryo up to a maximum of \$2,950, additional fees ranging from \$950 to \$2,050 and up, and home visits and follow-up visits of \$1,250 and \$250, respectively (Bonnie J. Bernard, Executive Director, 2006, personal communication). Thus, the total cost ranges from \$5,900 to \$9,450.

"Donors" must provide medical and psychiatric information in a short application in order to begin the process. The application for adopting parents includes four non-relative references, documentation of life, health and homeowner's insurance, in addition to a will or letter from an attorney regarding a will. Embryos Alive places no restrictions or qualifications on who may adopt, and the agency has facilitated embryo adoptions to singles. The agency believes that it is the donor's prerogative to choose to whom their embryos will be given (Bonnie J. Bernard, Executive Director, 2006, personal communication). A list of embies is online – the organization calls them "situations available." The situations available page gives demographic and phenotypic information of the donating parents, including descriptions of their personalities, hobbies and interests. The number, age (how many days old and the date they were frozen), quality (per standardized grading system), and sibling information (previous live births) of the embies is also provided. The application also provides a section for donors to list what they desire in an adopting family, including what type of adoption is requested, marital status (e.g. if singles are acceptable) and age range of couples. An "other" section allows for additional comments, among which donors currently have indicated they prefer: someone with no current children, couples of a particular religious identification, and a request that remaining embryos not be destroyed.

Embryos Alive gives adopting couples free reign with regard to what they can do with the embryos they adopt. For example, the agency has no restrictions regarding use of pre-implantation genetic diagnosis and sees itself as a facilitator of the adoption process, but does not desire to provide detailed regulations (Bonnie J. Bernard, Executive Director, 2006, personal communication). Thus, it does not regulate how many embryos the adopting couple may have transferred in a particular cycle, nor if the adopting couple may use selective reduction.

A visit to the Embryos Alive web site reveals an extensive FAQ (frequently asked questions) page, complete with general information regarding heredity and genetics. The web site also provides an extensive list of shipping options for adopting couples to choose, again in lines with the agencies mission of education, so that donors and recipients may make their own, informed decisions.

These three agencies seem to be the main agencies offering embryo adoption independent of what is done specifically through fertility clinics which view the practice less as adoption and more as another fertility treatment. The Surrogate Parenting Center of Texas (SPCT) did offer embryo adoption services, but has since discontinued their program due to lack of interest (Kim Browne, Office Manager, 2006, personal communication). To the best of our knowledge, there are no Catholic organizations offering embryo adoption services.<sup>6</sup>

## 4 Embryo Adoption and Catholic Social Teaching

The three embryo adoption agencies discussed in the previous section all in some fashion identify with the Christian tradition in coming to their conclusions about the goodness of embryo adoption. None of them identify intrinsic moral problems with it, which is to be expected of institutions who are actively engaged in the practice. Rather, these institutions focus on the goods attendant to giving these embryos a chance at life and allowing a couple to experience the joys of parenthood. And it is important that these fundamental goods be clearly recognized.

Yet, questions are appropriately raised as to whether all of the adoption and adoption-related practices of these institutions embody an adequate understanding of the human good. While it is necessary to look at specific practices that may be questioned morally (and we do so in the next section), it is also important to provide an overarching systematic vision of the goods involved in the practice of embryo adoption. Such an articulation can serve as the basis of a mission statement for an institution whose goal is to facilitate embryo adoption in a manner consistent with Catholic moral and social teaching. That is the purpose of this section.

In one sense, it seems superfluous to provide a theoretical justification for embryo adoption if indeed it is a form of adoption. From the beginning of the Christian tradition, Catholic institutions have been involved in the rescue and placement of foundlings, orphans, and relinquished children.<sup>7</sup> The good of finding

---

<sup>6</sup>There are, however, Catholic fertility clinics such as The Pope Paul VI Institute in Omaha, NE, which uses “NaPro technology” (an advanced hormonal monitoring system) to aid couples in curing certain forms of infertility.

<sup>7</sup>On this question, see D. Amundsen (1996). *Medicine, Society, and Faith in the Ancient and Medieval Worlds* (pp. 50–69). Baltimore, MD: The Johns Hopkins University Press; J. Boswell (1988). *The Kindness of Strangers: The Abandonment of Children in Western Europe From Late Antiquity to the Renaissance*. New York: Pantheon Books.

loving and stable homes for infants and children whose parents are for whatever reason unable or unwilling to raise their child is not questioned.<sup>8</sup> In general, the willingness of married couples (or in some cases single relatives or other single persons) to take in such foundlings, acknowledging the reality of a wide variety of motives in so doing, typically constitutes a good for the child, for the parents, and for the society.

Occasionally some authors criticize the motives of persons seeking to adopt a child, claiming that their desire for a child is not primarily for the good of the child, but for some ulterior motive. On the one hand, since it is possible for human beings to do almost anything otherwise good thing from perverse motives, we have no doubt that on occasion people may well adopt with bad motives.<sup>9</sup> On the other hand, any generalized suspicion regarding the motives of people who wish to adopt is in itself deeply suspect, assuming as it does a false opposition between (1) the good of a child needing a permanent family and (2) the good of the potential adoptive parent. The desires to (a) aid an orphan and (b) find fulfillment in the raising of a child are perfectly compatible when rightly ordered (see O'Donovan on this point in Gregory [this volume], p. 214). Brakman (this volume) helpfully develops this point with her discussion of the good of parenthood as a vocation. In fact, it could very well be argued that a potential adoptive parent who has purely "altruistic" motives, who foresees no personal fulfillment in raising a child, is precisely the kind of person who should not be raising a child.<sup>10</sup> In summary, we see no need to generate a systematic defense of the good of adoption, or a generalized moral justification for those who wish to adopt.

---

<sup>8</sup>Of course, this is not to deny those particular instances of adoption or certain kinds of adoption (e.g., some international or interracial adoptions) that have been questioned morally. These questions are usually raised because of concerns of perceived and/or actual injustices done to the birth parent(s) and/or child. That such concerns should arise is not at all surprising considering that the very necessity of adoption arises from a pre-existing evil (i.e., that the child cannot be raised by its birth parents, either because of some tragedy (i.e. death, disability, etc.), or because of irresponsibility, or by due consideration of the best interests of the child).

<sup>9</sup>Historically, one can very well question how often adoption was done merely for the good of the child. Anne Shirley, arguably the most famous adopted child of early twentieth-century fiction literature, was adopted not out of a desire for Matthew Cuthbert to assist a needy child, but to get help on the farm (L.M. Montgomery [1908]. *Anne of Green Gables*, Boston, MA: L.C. Page & Co.). We see no reason to believe that Matthew Cuthbert's motives, though fictional, were atypical in that time.

<sup>10</sup>Such a person is reminiscent of Kant's grieving philanthropist. "Suppose then, that the mind of this philanthropist were overclouded by his own grief, which extinguished all sympathy with the fate of others, and that while he still had the means to benefit others in distress their troubles did not move him because he had enough to do with his own; and suppose that now, when no longer incited to it by any inclination, he nevertheless tears himself out of this deadly insensibility and does the action without any inclination, simply from duty; then the action first has its genuine moral worth." (Kant, 1997). *Groundwork of the Metaphysics of Morals* (pp. 11–12), In M. Gregor (Ed.), Cambridge: Cambridge University Press, Cambridge). While it is by no means clear that Kant in fact thought that any inclination to do an action detracted from its moral worth, he is widely interpreted as doing so. Regardless of that, Kant's quest to differentiate and isolate motives, and criticize those that fail the "duty test," resonates with the kind of moral viewpoint we are here critiquing.

However, since the practice of EA has come under question, and since institutions have a particular responsibility to be clear as to their mission, our goal of providing a vision of the good of EA for an institution remains important and necessary. Toward this end, we can begin by being reminded of fundamental principles of Catholic social teaching that should underlie the efforts of all authentically Catholic institutions. Four important principles that are particularly relevant for an institution dedicated to facilitating EA are (a) the sanctity of human life and the dignity of the human person (b) the common good (c) the preferential option for the poor and (d) the principle of subsidiarity. Their importance lies in orienting an institution towards fundamental elements of the human good and in ruling out certain activities as incompatible with the true human good.

However, while such principles serve as important referents for an institution, in themselves they do not lead to a flourishing embryo adoption institution, unless those persons operating it possess virtues which enable them to perform certain kinds of tasks well. For example, those operating an EA institution will need to have skills to recognize what kinds of practices of the institution in fact serve the human good as articulated by these principles (e.g., the sanctity of human life, and preferential option for the poor), and also have the necessary virtues to make wise decisions in the multiplicity of situations and contexts. Furthermore, the virtuous application of these principles does not produce a minimalist ethic (e.g., merely avoid intentionally killing embryos), but rather one which seeks the true good of all those involved, without at the same time requiring a high level of virtue from all those involved in the process.<sup>11</sup> The virtue possessed by the person who lives Catholic social principles is that of solidarity.<sup>12</sup> So, in presenting the above four principles as the moral basis for a Catholic embryo adoption agency, the point is not simply that these principles are to be held up as exemplary, but that those who operate the institution will necessarily embody the virtue of solidarity if the institution can be expected to embody these moral principles.

Since the virtuous application of principles always requires a context, it is only possible to note a few ways in which we see these principles and the virtue of solidarity potentially at work in the considerations of an institution dedicated to embryo adoption.

The most obvious application of the principle of the sanctity of life pertains to the proper treatment of the embryos in the care of the adoption agency. The principle is also relevant to educating the genetic parents of the embryo and potential adoptive parents about the dignity of the embryonic child and of their respecti-

---

<sup>11</sup> However, it is by no means adequate to simply appeal to such principles – Catholicism has traditionally held a kind of minimalism with regard to moral principles – not just a matter of avoiding killing embryos but of expressing a constructive concern for them – an aspirational ethic with an interest in contributing to the cultural transformation. A particularly important statement of the goal of cultural transformation through institutional action from a Catholic perspective can be found in the final chapter of John Paul II's *Evangelium Vitae* (1995).

<sup>12</sup> See the *Catechism of the Catholic Church* (CCC), #1939–1942.

familial rights and responsibilities. Discernment as to degree of involvement appropriate for relinquishing and adopting parents requires the virtues of love and solidarity, involving decisions as they do which should be ordered both towards the good of the child and appropriate solidarity across generations at this earliest stage of human life.<sup>13</sup> It can also be hoped that the practices of a Catholic embryo adoption agency can contribute to a cultural transformation in which the inherent dignity of embryos will be increasingly recognized, and that legal systems will move from a “property” to a “person” paradigm when considering such embryos, as Cheely notes elsewhere in this volume.

The virtue of solidarity is also important for seeing the applicability of the principle of the preferential option for the poor to embryos, especially in recognizing the relevance of the Scriptural injunction of caring for “the least of these” in relation to the care of embryos. We would argue along with Brakman (this volume) and Gregory (this volume) that abandoned frozen embryos do indeed qualify as being some of the most vulnerable and needy of human beings and thus as some of “the least of these.” Although some Catholic moral theologians have applied the principle of ordinary versus extraordinary treatment to embryos, to argue that cryopreservation is extraordinary treatment and that therefore they can be allowed to die, this seems to be a misapplication of the principle on a number of grounds. First, as Pacholczyk (this volume) points out, the principle typically assumes a patient with a terminal or at least life-threatening condition, which is not the case with the typical cryopreserved embryo. Second, the principle turns not on the degree or kind of technology used, but the perceived benefits and burdens on the patient/embryo, and it would seem fairly clear that the benefits of cryopreservation to the embryo outweigh any ongoing burdens. Third, the principle is ordinarily to be applied by the patient/embryo, and since the patient/embryo is not in a position to make this judgment, then the proxy judgment must be in the best interests of the patient/embryo. We have yet to read an argument by a Catholic moral theologian arguing that it is in the best interests of an embryo to be allowed to die rather than to be implanted in a womb to be gestated to birth.

The virtue of solidarity is also important for seeing the relevance of the principle of the common good for an institution dedicated to the adoption of cryopreserved embryos. As discussed earlier in the paper and elsewhere, a number of Catholic theologians have put forward alternative viewpoints (e.g., they must be left abandoned or that they can be rescued) about what can and should be done regarding such embryos.<sup>14</sup> We have argued elsewhere that these alternative paradigms are ultimately morally inadequate, for two different reasons. First, these alternative paradigms are internally inadequate, giving unpersuasive accounts of what is in fact

---

<sup>13</sup> On the notion of “solidarity between the generations,” see Pontifical Council for Justice and Peace (2004). *Compendium of the Social Doctrine of the Church*, no. 230. Vatican City: Libreria Editrice Vaticana.

<sup>14</sup> See M. Geach (1999) and W.E. May (2005). ‘On “Rescuing” frozen embryos: Why the decision to do so is moral,’ *The National Catholic Bioethics Quarterly*, 5, 51–57.

taking place.<sup>15</sup> Second, and more important for our purposes here, these accounts both are inadequate externally, in that they fail to adequately address the Catholic vision of the common good. Both of these alternative viewpoints fail to adequately recognize the nature of familial relationships and the significance of their contribution to the common good of our society. On the one hand, the viewpoint that outright rejects the adoption of these embryos fails to adequately recognize the great moral good served by finding (gestational and social) homes for these embryos. On the other hand, the viewpoint that believes that these embryos can be “temporarily adopted” by a gestational mother (i.e., with the intent to later relinquish the child to yet other parents) unwittingly detracts from the common good of a society by undermining the notion of parenthood as permanent, seeking as it does to create the category of “temporary parent.”<sup>16</sup> How this fails children, temporary parents, and society as a whole has been discussed in more detail elsewhere.<sup>17</sup>

Finally, perhaps the most difficult principle to apply for an EA adoption agency is that of subsidiarity. The principle of subsidiarity has a long tradition in Catholic thought, and central to it is the protection of intermediate bodies (i.e., organizations and institutions) in a civil society from excessive state control.<sup>18</sup> With regard to these intermediate bodies in themselves, those which are “marked by the fearless attempt to unite efficiency in production with solidarity” are those which are seen to embody the principle of subsidiarity. Towards this end, a Catholic adoption agency will be guided by the principle of subsidiarity in, e.g., its decisions about (a) who, if anyone, to align itself with (e.g., a Catholic charities, or a Catholic hospital/medical school) (b) who to seek assistance from in funding the institution, c) whether to engage in heterologous embryo transfer “in house” or subcontract this medical procedure to an outside agency.

In considering all of these principles, it is necessary that the virtue of solidarity be operative. As we have seen, the virtue of solidarity is necessary to rightly understand the scope and guide the application of these principles in particular contexts. However, the virtue of solidarity also guards against a kind of moral minimalism that institutions may tend towards when moral principles are seen as akin to laws that an institution is to a void breaking. When those guiding an institution possess the virtue of solidarity, they are guided by these principles not in a way that merely avoids directly transgressing civil or moral laws, but in a way that energetically

---

<sup>15</sup> See J.R. Berkman (2003). ‘Gestating the embryos of others: Surrogate? Adoption? Rescue?’ *National Catholic Bioethics Quarterly*, 3, 309–329 and J.R. Berkman (2006).

<sup>16</sup> See E.C. Brugger (2006). ‘A defense by analogy of heterologous embryo transfer,’ in T.V. Berg & E.J. Furton (Eds.), *Human Embryo Adoption: Biotechnology, Marriage, and the Right to Life* (pp. 197–229). Philadelphia, PA: The National Catholic Bioethics Center; P.F. Ryan (2006). ‘Our moral obligation to the abandoned embryo,’ in T.V. Berg & E.J. Furton (Eds.), *Human Embryo Adoption: Biotechnology, Marriage, and the Right to Life* (pp. 297–326). Philadelphia, PA: The National Catholic Bioethics Center.

<sup>17</sup> See J.R. Berkman (2006).

<sup>18</sup> Pontifical Council for Justice and Peace (2004). *Compendium of the Social Doctrine of the Church*, nos. 185–187. Vatican City: Libreria Editrice Vaticana.

serves as much as possible the dignity of human persons, vigorously seeks to aid the poor and marginalized, bravely seeks a renewal of the wider culture by its contribution to the common good of society, and determinedly organizes itself in a way that both functions as cost-effectively as possible and authentically serves the good of its clients as directly as possible.

## **5 A Catholic Embryo Adoption Agency: Considering Contemporary Practice**

While elements in the field of human reproductive technology hold promise for aiding couples in overcoming infertility, the field is full of practices that undermine the flourishing of human individuals and the dignity of human life in its beginning. What we would like to do here is conceptualize what a comprehensive Catholic model of embryo adoption might look like. The focus of this description will be on an institutional level. If it to be done, what ought the practice look like if it is: (1) to serve the flourishing of human individuals (e.g., at a minimum the sanctity of human life and the option for the poor and marginalized), (2) to serve the common good (including a recognition of subsidiarity) of society, and (3) to avoid moral accommodation with the spirit and practices of those elements of the new “reproductive technology” which neither serve the flourishing of individuals or the common good of our society? Since the Catholic health care system in the USA would seem to be the appropriate institutional context for such practice, our goal is to delineate how we might see embryo adoption integrated into a model of Catholic health care, while avoiding cooperation problems in a system with ethically questionable practices. To do so, we will integrate some of the elements from the embryo adoption agencies described in the third section while thinking of the principles discussed in the fourth. By analyzing a multitude of actual current practices with regard to embryo adoption in the light of the depth and breadth of Catholic social teaching, we hope to make a significant and practicable advance on the current debate.

If an embryo adoption clinic were to be created under the auspices of a Catholic adoption agency or infertility clinic, these are some of the issues that would need to be addressed in order to ensure that the embryo adoption is practiced in accordance with the virtue of solidarity, keeping in mind the sanctity of life, the mandate to the poor, the common good, and subsidiarity.

### ***5.1 The Sacredness of Embryonic Life***

One of the major objections of Catholic ethics to many reproductive techniques is the instrumental approach it has typically taken and continues to take to nascent human life. The development of techniques like in vitro fertilization involved the voluntary creation and destruction of innumerable human embryos. Such techniques

took a largely instrumental view of the embryo, according to no intrinsic dignity. Many of the current techniques for overcoming infertility not only accept (arguably as a side effect) that many embryos will not survive, but typically intend that many of the embryos created will not survive. Thus, an institution for EA would seek to take various steps to insure that it did not similarly instrumentalize the embryos that came into its care.

The most fundamental principle regarding the dignity of human embryos for a Catholic EA agency is that the good of the embryos in its care should be foremost, similar to the good of the child in a regular adoption agency. This concern will take many forms, as in the following three examples.

First, a Catholic EA agency will show its concern for the good of the embryo by making every effort to insure that all viable embryos in its care have the opportunity to be implanted. Thus, unlike a typical IVF clinic, an EA agency would typically only accept embryos into its care for which an adopting couple was pledged to gestate, or which the EA agency had very good reason to believe it would be able to place. For a Catholic embryo adoption agency would not wish to perpetuate the process of warehousing abandoned embryos. Optimally, the adopting couple would only receive as many embryos as they would be willing to implant. It is foreseeable that an adopting couple might desire to adopt more embryos than the couple could implant at one time in the event that none implanted on the first try, or if the couple desired more than one child, so that the siblings could be genetically related to each other. However, in order to avoid instrumentalizing some embryos for the potential benefit of adoptive parents or other embryos, it would be morally important for the adopting couple to commit themselves to eventually implanting all of the embryos which they would have adopted.

Second, a Catholic EA agency will respect the dignity of each embryo by insuring that embryo transfers never involve more embryos than the number the mother can be expected to safely (and willingly) gestate. In most cases, this will mean that a transfer will involve only one or two embryos.<sup>19</sup>

---

<sup>19</sup> It should be noted that implanting one or two embryos has not been the standard of practice in US fertility clinics. In fact, a grave example of the instrumentalization of embryos has been the (standard) practice of many IVF clinics in the US (at least up until recently) to implant large numbers of embryos, on the assumption that typically only one or perhaps two embryos will implant. (In 2004, the American Society for Reproductive Medicine [ASRM] and the Society for Assisted Reproductive Technology [SART] issued revised practice guidelines which recommend no more than two to four embryos be implanted in an IVF-ET procedure, the number depending on the woman's age and other factors. However, even these numbers are only recommendations and some IVF clinics still transfer relatively large numbers of embryos.) This has led to a staggering increase in the US of multiple pregnancies, not only of twins, but also of triplets, quadruplets, quintuplets, and beyond. Since gestations of more than three or four fetuses usually result in miscarriages or pre-viable deliveries, this has led to a procedure of selective abortion ("selective reduction" in the medical literature) to decrease the number of fetuses in the womb and increase the likelihood of some fetuses surviving. It should also be added that sometimes couples will elect selective abortion because they want a twins rather than triplets or a singleton rather than triplets, etc.



Third, a Catholic EA agency will typically only perform tests or pre-implantation genetic diagnosis (PGD) on embryos when done for the good of the embryo. There are instances where certain forms of PGD can be intended for the good of the embryo – to prepare medical treatments or gene therapy that could be done in utero or immediately upon birth – but this is rarely the intent in PGD. In morally evaluating (and typically excluding) PGD, a Catholic EA agency would take into account the conditional harm intended depending on the results of PGD.<sup>20</sup> This would stand in contrast to common practices in IVF clinics, which typically offer PGD to test for a variety of chromosomal abnormalities for the purpose of discarding embryos that appear to have some defect. Such clinics do PGD for conditions such as chromosomal abnormalities or monogenic disorders, or use it to determine the sex of an embryo.

Beyond these three concrete ways to respect the inherent dignity of embryos, there are at least two other contexts in which an EA agency might embody its concern for the dignity of embryos. First, in the ways it deals with the *source* of the embryos it seeks to find homes for – i.e., parents who wish to relinquish their embryos, and/or IVF clinics that may be able to offer embryos. Second, in the way that it deals with the *very existence* of vast numbers of cryopreserved embryos.

The frozen embryos which an EA clinic will be hoping to aid are almost universally the product of IVF. Typically, IVF clinics create many more embryos for a client than implanted in a single embryo transfer. This is done because of the possibility that the first cycle of ET will not lead to a viable pregnancy, and thus multiple rounds of ET are planned for, whether in fact they are needed or not. Since the process of obtaining ova from the woman is both expensive and not without potentially serious medical risks, it is economically advantageous for the couple and medically advantageous for the woman if enough embryos are created in one IVF for all the potential rounds of ET. Thus the justification for the creation of large numbers of IVF embryos, and the reason why there are so many currently existing cryopreserved embryos. It is then typical that a couple who have undergone IVF treatment (either successfully or unsuccessfully) are left with embryos that they are unwilling (or occasionally) unable to implant.

An EA agency which wishes to aid these embryos thus finds itself in a difficult situation. On the one hand, it wishes to assist embryos in need of its help. On the other hand, it will see what is being done by IVF agencies that create these embryos (with full knowledge that a large percentage of them will not be implanted) as a serious moral evil.<sup>21</sup> Thus, the EA agency will be concerned that its interaction with

---

<sup>20</sup> In the vast majority of cases, PGD is *not* done for the good of the embryo, but as a means of fulfilling particular desires of the parents not to have certain “kinds” of children and/or to have other kinds of children.

<sup>21</sup> If the EA agency is serious in its belief in the human dignity of embryos, it cannot but see the willful creation of large number of embryos destined to be cryopreserved orphans as akin to a company that foresees that its labor practices will lead to premature death of many of its employees who are husband and wife, resulting in the creation of large numbers of orphans.

the IVF clinics not be seen as in any way aiding, abetting or encouraging the creation of cryopreserved embryos. Catholic moral theology has a long tradition of reflection (known as the principle of cooperation with wrongdoing) on how an individual or an institution that is engaged in otherwise good actions can morally evaluate its actions that may or in fact do in some aid another individual or institution that is engaged in wrongdoing.<sup>22</sup> A Catholic EA agency would have to consider the particularities of its situation and exercise the virtue of solidarity in evaluating the ways in which it would be appropriate to cooperate with IVF clinics to procure embryos for adoption and ways in which it would wish to avoid cooperation.

Turning to the second context, there is also the question of how a Catholic EA agency is to deal with the very existence of such large numbers of cryopreserved embryos. Ironically, it would seem that an important part of its mission would be to advocate for public policies and individual decision-making that would put itself out of business as Keenan (this volume) also argues in discussing the mission of the NEDC. For a Catholic embryo adoption agency will only operate in a true spirit of solidarity and charity if it constantly aware of its fundamentally tragic origins, namely, that the very creation of embryos in vitro and their cryopreservation with no definitive plan for the implantation of each one is a grave injury to these embryos. Thus, a Catholic EA agency would encourage a moratorium on the creation of excess embryos, i.e., those IVF embryos created with the intent to cryopreserve them.

Through these and other means, we believe that a Catholic EA agency can act fully in accordance with the Catholic tradition's commitment to the sanctity of human life from conception to natural death, and provide new opportunities for Catholics to demonstrate their commitment to this end.

## ***5.2 Best Practice: Focus on the Process of Embryo Adoption***

We see the creation of a Catholic EA agency as a key opportunity to dispel common misconceptions about adoption and raise questions about how moral responsibility is to be assigned in EA. Reflection on who bears what responsibility in the context of EA is predicated on a certain philosophy which then informs proper practice. Since the debate on embryo adoption has been largely abstract and intramural, many interested people may not have thought about the minor details which might constitute ethical practice of embryo adoption. Our argument is that a Catholic embryo adoption agency could be most helpful in reconceiving the public perceptions

---

<sup>22</sup>For an important interpretation of and effort to nuance and develop this principle, see M. Cathleen Kaveny (2000). 'Appropriation of evil: Cooperation's mirror image,' *Theological Studies*, 61, 280–313; See as well a discussion of her argument as it relates to embryo adoption by Gregory (this volume) and further, Brown and Eberl (this volume) for an extended discussion of cooperation, complicity and causing scandal.

of embryo adoption and its attendant virtues. Let us now think of the role that a Catholic embryo adoption agency could play in facilitating virtuous practice.

### 5.3 *Dispelling Myths and Fostering Virtue*

A Catholic EA agency operating within the climate of American adoption practice must be aware of (and willing to challenge) problematic stereotypes widely accepted regarding those seeking to adopt. On one hand, adoption is sometimes romanticized as an act of great charity and sacrifice, in accordance with an esteemed Christian tradition. On the other hand, couples seeking to adopt a child are sometimes ridiculed as doing something comparable to child “shopping.” They are critiqued for engaging in an expensive and egotistical quest to accessorize their lives with a child. On the flip side, those who relinquish their children or embryos for adoption are either praised for their compassionate gift of life to others, or criticized for abandoning their children. The truth in the vast majority of cases lies somewhere in the middle, both for those wanting to adopt, and those seeking to relinquish.

Let us begin with the way in which an EA agency might encourage adopting couples to understand what they are doing. Most fundamental to this is to evaluate how the very act of adopting an embryo is most adequately construed, morally speaking. Thomas Williams (2005, p. 90) speaks of the act of adopting an embryo in terms of charity. He cogently argues that no woman should be asked to bear the *duty* of gestating and raising an embryo she did not create. “The sacrifice implied and the myriad other circumstances coming into play preclude the possibility that heterologous embryo adoption could ever be considered a universal moral obligation” (Williams, 2005, p. 97).<sup>23</sup> While we agree with Williams that embryo adoption can and should be seen as charitable, we think that it is only a partial view of the appropriate motivation for adoption, and if misunderstood, is in danger of falling into the kind of romanticizing of adoption we wish to avoid. For it should be remembered that adopting couples typically have a vested interest in adopting these embryos. Many who consider EA will be struggling with infertility, and will adopt an embryo as a means of creating a family. Others will adopt an embryo because they would like to raise another child. This does not mean that it is not an act of charity, but that the decision will also be predicated on (legitimate) aspirations to parenthood, and in some cases a sense of responsibility, or a vocation to ameliorate a serious societal problem. Therefore charity may not be the most adequate description

---

<sup>23</sup> While we are sympathetic to Williams’ general point, we can certainly imagine various scenarios where it could well be argued that EA was morally obligatory. For example, if a couple strongly encouraged their sister and brother-in-law to have IVF, funded their choice to create the embryos, and so on, and after the creation of the embryos the sister and brother-in-law were tragically killed, we could certainly imagine the other couple considering themselves having a moral obligation to gestate and raise their embryonic nieces and nephews. For a fictional account of an analogous situation, see Ann Tyler’s *Saint Maybe*.

of what a couple is choosing in adopting an embryo. Rather, if we take into account the couple's likely complex motivation which includes the desire to aid the embryonic person, the desire to raise a (or another) child, and the desire to contribute to the good of society as a whole, perhaps a more adequate description of their action is one of solidarity with these embryos.

Similar to the myth that those adopting embryos are either purely saintly or selfish, the intentions of embryo donors are also inappropriately caricatured. As discussed in the second section of the paper, embryo donors are in some contexts touted as giving other couples the ultimate gift of charity or in other contexts vilified as abandoning their embryos to an uncertain life or a lonely death. Once again, the truth typically lies somewhere in between. Those who relinquish their embryos (to those wishing to adopt) are in fact a small minority among the much larger number of couples with frozen embryos who are unwilling to place their embryos for adoption. Those that have chosen to relinquish their embryos rather than letting them expire or turning them over for experimentation purposes are typically compelled by a sense of responsibility to allow these embryos to gestate. This sense of responsibility might be characterized in a similar manner to the sentiments of the adopting couple, as a mindfulness of the dignity of human life and the desire to help other couples start a family. Yet in relinquishing their embryos, this also enables such couples to absolve themselves of further responsibility to embryos that they do not wish to gestate themselves.

Although we might expect embryo donors to be expected to bear a significant portion of the responsibility for the welfare of their embryos, we find from our examination of contemporary practice of EA that it is a "donor's market," so to speak. Since there are more couples desiring to adopt embryos than couples wishing to relinquish their embryos (or at least that is the appearance from the policies of the various EA agencies discussed in Section 5.2), embryo adoption agencies place almost the entire burden of the transfer of responsibility for the embryos on the adopting couple. In their literature, EA agencies tend to romanticize the "gift" being given by the donor parents, and ask practically nothing from them. The donor couple typically bears no portion of the cost of their transfer of their embryos. Until new federal regulations were enacted last year, the donor couple was not asked to do anything beyond completing a brief application.

Thus, it would seem that an EA agency which wishes to engender an attitude of solidarity towards cryopreserved embryos faces a tougher challenge when considering how to engage those couples who are considering donating their embryos. Although the EA agency can commend those willing to relinquish their embryos for their desire to give their embryos a chance to continue the life cycle by being adopted, an adequate expression of solidarity with the embryos probably requires an agency to inquire why the relinquishing couple is choosing not to gestate their own offspring.<sup>24</sup>

---

<sup>24</sup> There are some who would argue that adoption is second best to being raised by one's genetic parents. Clearly there are certain circumstances in which this would not be the case – for instance, if the child were abused in the home of his genetic parents. Catholicism also has a long history of championing the good of adoption. For an account of the priority of parenthood as a moral as opposed to genetic category, see J.R. Berkman (2006).

Morally speaking, we argue the adopting couple are giving more of a gift to the relinquishing couple than vice versa. This becomes clear if we recognize that at least in most cases, genetic parents have a grave responsibility to give their cryopreserved offspring an opportunity to live the human life cycle. Thus, a couple's relinquishing their embryos might be viewed as akin to an act of *reparation* to them. We call it an act of reparation since the couple who commissioned them has likely wronged them in one of two ways: either the couple created them with the intent to gestate them and for some reason are simply unable to do so (and have thus failed them); or the couple only conditionally intended to gestate them (depending on whether these particular embryos were "needed,") and in that intention has morally wronged those embryos. Thus, it is fully appropriate that such couples seek to repair their failure to their embryos.

Hence, the relinquishing couple receive a gift from the adopting couple in two ways: First, the adopting couple frees the relinquishing couple from living with an unfulfilled moral responsibility; second, the adopting couple assumes a positive responsibility (the adoption of the relinquishing couple's offspring) which the relinquishing couple is unable or unwilling to fulfill.

Thus, since couples relinquishing embryos (as opposed to those relinquishing a child) typically have significant resources, it would seem morally appropriate for the relinquishing couple to assume a significant part of the burden (financial and otherwise) involved in the transfer. Of course, we realize this account will not resonate with many, and that is but an indication of the challenge faced by an EA agency that wishes to understand its mission fundamentally in terms of the virtue of solidarity.

#### ***5.4 Embryo Adoptions: Fees and Selection***

It might not be immediately clear how this discussion relates the proper administration of a Catholic EA agency. Since the focus of this article is the way in which a Catholic EA agency can encourage all parties involved in the EA process to act in solidarity with the embryos being adopted, it is up to such an agency to reframe the debate in these terms. Perhaps the most important way such a perspective on moral responsibility and virtue bears on an institution is the way in which it structures embryo transfers. We suggest that an EA agency should structure its fees so that the donating couple bears more of the costs of EA. At one agency, those seeking to adopt can be asked to pay for the relinquishers' storage fees, shipping fees, phone bills, attorney fees, counseling costs, other "reasonable expenses." Yet, if our understanding of the relationship between the relinquishing and adopting parties is correct, then it would seem appropriate that it be translated into a shared responsibility (both financial and otherwise) of both parties to complete a successful embryo adoption.

A more complicated way in which the structure of a Catholic embryo adoption agency might differ from those agencies currently in operation would be the degree to which both donors and recipients are given choice in an adoption. As we

have seen, the donating couples are often given wide latitude to impose certain conditions on the recipient couple. These conditions can range from state of residence, to religion, to age. However, we argue that in order to act in accordance with the virtue of solidarity towards life and towards the common good, a Catholic EA agency would reconsider the prerogatives typically assigned to relinquishing couples. As we have seen above, the typical argument for allowing donating couples such latitude of choice embodies or at least approximates the view typically based on either (a) a problematic view of the relationship between the relinquishing couple and their embryonic offspring, and/or (b) a simple utilitarian calculus for maximizing transfers. The former argument is that the embryos are the property of the relinquishing couple which they are free to dispose of as they please. The latter argument is that since the rate-limiting step in EA at this time is the number of donor embryos available, by giving donating couples what they want, the number of successful embryo adoptions will be maximized. This position is further supported by the notion that an embryo (even if it is considered equal in moral status to a child), does not have the same needs as a child. Thus to some, allowing a match process between parties does not seem as morally problematic as it would with a born child in a traditional adoption.

In one sense, this type of a hands-off approach to adoption facilitation “works.” As evidenced in Section 5.2, embryo adoptions are facilitated by a number of organizations with similar missions. Yet we question whether the current system encourages the virtue of solidarity, and are skeptical that a Catholic embryo adoption agency could legitimately operate in this manner. In particular, we find elements of the scrutiny of adoptive parents irrelevant to assessing their competency to raise a child, and some of it demeaning. While it may be appropriate and necessary for prospective adopters to provide information about themselves to potential donors such as their education, employment status, and their philosophy on parenting, requiring the laundry list of information currently required by some agencies is arguably harmful to adoptive parents. Furthermore on some sites, adopting couples broadcast the most intimate details of their lives on the Internet for all to see – a point which we will address later. The point is that not all of this information is helpful in determining whether adoptive couples will make good parents, and it is damaging in the process. It creates a power imbalance between donors and adopters, rather than a collaboration founded in solidarity and attention to the common good. It discourages donors from thinking of their own responsibilities and rather allows them to judge adoptive couples on tangential information. The process becomes more like an auction to the most desirable bidder than an adoption of a child. We suggest that this ultimately diminishes the focus on the embryos, thus undermining their dignity.

This is not to say that adopting couples do not enjoy their own latitude of choice in many embryo adoption programs. Ostensibly, adopting couples could choose embryos based on race, gender, religious affiliation of their creators, or probable physical or intellectual features. However, there is question as to which characteristics of the embryo an adopting couple might virtuously choose. This could potentially be an opportunity for eugenics to insert itself into the selection

process. Here, many of the traditional argument of adoption ethics seem to apply. A Catholic adoption agency could prevent such a market-driven approach by encouraging adopting couples to center their selection process on the flourishing of their potential family. Selection can thus be virtuous if considering what might create a good fit and promote expansive familial love, rather than fostering inappropriate discrimination. While we are not prepared to suggest specific acceptable criteria, we are suggesting an appropriate framework for thinking about virtuous embryo selection. Creating the structure in which a successful match might be reasonably accomplished however, is the responsibility of the embryo adoption agency, it is incumbent upon it to set up a structure in which this could be reasonably accomplished.

Closely related to issues of selection is the question of how adoption agencies would virtuously facilitate a match process. As seen in Section 5.2, some web sites make information readily available on their web site. Adopting couples make their personal information quite public on many of these sites and embryos are extensively described in terms of embryo quality, age, and genetics. This is true for some Catholic adoption agencies offering traditional adoption as well: Children's pictures and profiles are available at the click of a mouse.<sup>25</sup> We question whether this very personal information should be made available on such an impersonal forum as the Internet. Some sites are password protected, meaning that personal information is only seen by those who might directly have need of it. However, this approach to disseminating information is disconcertingly impersonal, evoking images of online shopping for children or for birth families. Even if some families are entirely comfortable with this structure, odds are high that others are highly uncomfortable divulging the reason for their infertility and other intimate details of their lives. A Catholic embryo adoption agency should refrain from making this type of information available on the Internet and should look to the privacy of both donors and recipients.

## 5.5 *Counseling*

Such a departure from current practice is but one of many reasons that a Catholic embryo adoption agency should employ counselors specifically trained to educate and assist both relinquishing and receiving couples throughout the process. Multiple studies have shown the tremendous impact of infertility on couples, who can have as much stress as patients diagnosed with terminal illnesses (Bankowski, 2005, p. 828). Bankowski also notes that these high levels of stress can negatively affect the success of an embryo transfer and implantation. Counseling sessions

---

<sup>25</sup> See <http://catholic.adoption.com>. This site has profiles of adopting couples with "Dear Birthmother" letters. The site also provides links to pictures of "waiting children," although these links were nonfunctional at the time this article was published.

should be part of initiating the adoption process, and additionally a available upon request throughout the transfer process, pre gnancy and birth. Included within these counseling sessions should be a discussion of the best manner in which to discuss embryo adoption with any future child born from the transfer.<sup>26</sup>

## 6 Conclusion

Although this analysis has been framed in terms of Catholic Social Thought, and specifically the virtue of solidarity, and we have outlined how EA could be virtuously practiced in a Catholic health care system, we would stress that we hope our work will contribute to finding a moral consensus and standardization in the practice of embryo adoption. We certainly encourage and applaud efforts by various religious and intellectual traditions who are working to serve the needs of cryopreserved embryos, and encourage all efforts to aid such embryos based fundamentally on what is best for these embryos. We further hope that this analysis has opened the door for conversation regarding the ethical practice of embryo adoption so that the practice may expand life and create an ethical alternative for couples struggling with infertility.

## References

- Amundsen, D. (1996). *Medicine, Society, and Faith in the Ancient and Medieval Worlds* (pp. 50–69). Baltimore, MD: The Johns Hopkins University Press.
- Bankowski, B.J., Lyerly, A.D., Faden, R.R., & Wallach, E.E. (2005). 'The social implications of embryo cryopreservation,' *Fertility and Sterility*, 84, 823–832.
- Berkman, J.R. (2002). 'Adopting embryos in America,' *The Scottish Journal of Theology*, 55(4), 438–460.
- Berkman, J.R. (2003). 'Gestating the embryos of others: Surrogacy? Adoption? Rescue?' *National Catholic Bioethics Quarterly*, 3, 309–329.
- Berkman, J.R. (2006). 'Virtuous parenting and orphaned embryos,' in T.V. Berg & E.J. Furton (Eds.), *Human Embryo Adoption: Biotechnology, Marriage, and the Right to Life* (pp. 13–36). Philadelphia, PA; Thornwood, NY: The National Catholic Bioethics Center and The Westchester Institute for Ethics and the Human Person.

---

<sup>26</sup>The ethics of disclosure is a wide and fascinating topic which has not been addressed in the context of embryo adoption. Since embryo adoption presents many unique conditions of conception and relationships, what virtuous disclosure might look like is a topic which needs to be addressed with future scholarship. For an interesting website which has created a series of children's book on assisted reproductive technologies, see [www.XYandMe.com](http://www.XYandMe.com). The American Society of Reproductive Medicine (ASRM) has a long list of supportive literature for children on their website.



- Boswell, J. (1988). *The Kindness of Strangers: The Abandonment of Children in Western Europe from Late Antiquity to the Renaissance*. New York: Pantheon Books.
- Brugger, E.C. (2006). 'A defense by analogy of heterologous embryo transfer,' in T.V. Berg & E.J. Furton (Eds.), *Human Embryo Adoption: Biotechnology, Marriage, and the Right to Life* (pp. 197–229). Philadelphia, PA; Thornwood, NY: The National Catholic Bioethics Center and The Westchester Institute for Ethics and the Human Person.
- Catechism of the Catholic Church* (CCC), #1939–1942 (2005). [Online]. Available: [http://www.vatican.va/archive/compendium\\_ccc/documents/archive\\_2005\\_compendium-ccc\\_en.html](http://www.vatican.va/archive/compendium_ccc/documents/archive_2005_compendium-ccc_en.html).
- Congregation for the Doctrine of the Faith (1987). *Donum Vitae (Instruction on Respect for Human Life in Its Origin and on the Dignity of Procreation: Replies to Certain Questions of the Day)* [Online]. Available: [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_19870222\\_respect-for-human-life\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19870222_respect-for-human-life_en.html).
- Embryos Alive* (2006). [Online] Available: <http://www.embryosalive.com/>.
- FDA Issues Regulations on Human Cells, Tissues, and Cellular and Tissue-based Products; Donor Screening and Testing, and Related Labeling – Testing Requirements are Modified for Egg Donors and Embryo Donors.* (2007). [Online]. Available: <http://www.asrm.org/Media/FDA/may05tissueregulations.html>.
- Geach, M. (1999). 'Are there any circumstances in which it would be morally admirable for a woman to seek to have an orphan embryo implanted in her womb?' in L. Gormally (Ed.), *Issues for a Catholic Bioethic*. London: The Linacre Centre.
- Hoffman, D.I., Zellman, G.L., Fair, C.C., Mayer, J.F., Zeitz, J.G., Gibbons, W.E., & Turner, T.G. (2003). 'Cryopreserved embryos in the United States and their availability for research,' *Fertility and Sterility*, 79, 1063–1069.
- John Paul II (1995). *Evangelicum Vitae* [On-line]. Available: [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/encyclicals/documents/hf\\_jp-ii\\_enc\\_25031995\\_evangelium-vitae\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae_en.html).
- Kant, I. (1997). *Groundwork of the Metaphysics of Morals*, in M. Gre gor (Ed.). Cambridge: Cambridge University Press.
- Kaveny, M.C. (2000). 'Appropriation of evil: Cooperation's mirror image,' *Theological Studies*, 61, 280–313.
- May, W.E. (2005). 'On "Rescuing" frozen embryos: Why the decision to do so is moral,' *The National Catholic Bioethics Quarterly*, 5, 51–57.
- Montgomery, L.M. (1908). *Anne of Green Gables*. Boston, MA: L.C. Page.
- Nightlight Christian Adoptions (2006). *Snowflake Adoption Program* [Online]. Available: <http://www.nightlight.org/snowflakeadoption.htm>.
- Pontifical Council for Justice and Peace (2004). *Compendium of the Social Doctrine of the Church* (Libreria Editrice Vaticana: Vatican City), §§ 185–87.
- Ryan, P.F. (2006). 'Our moral obligation to the abandoned embryo,' in T.V. Berg & E.J. Furton (Eds.), *Human Embryo Adoption: Biotechnology, Marriage, and the Right to Life* (pp. 297–326). Philadelphia, PA; Thornwood, NY: The National Catholic Bioethics Center and The Westchester Institute for Ethics and the Human Person.
- Surrogate Parenting Center of Texas (SPCT) (2006). [Online]. Available: <http://www.spct.org/>.
- The National Embryo Donation Center (NEDC) (2006). [Online]. Available: <http://www.embryodonation.org/>.
- United States Conference of Catholic Bishops (USCCB) (2001). *Ethical and Religious Directives for Catholic Health Care Services*, 4th ed. [Online]. Available: <http://www.usccb.org/bishops/directives.shtml>.
- Williams, TD. (2005). 'The least of my brethren: The ethics of heterologous embryo transfer' *The Human Life Review*, 31, 87–98.

# Embryo Adoption and the Law

Elizabeth Cason Crosby Cheely

## 1 Introduction

The adoption of frozen embryos is an international practice that has proved challenging from a legal perspective. More and more couples and individuals are procreating through assisted reproductive technologies (ARTs) such as in vitro fertilization (IVF), which entails the creation and early development of a number of embryos outside the womb. Many of these couples end up with surplus IVF embryos after they consider their families complete, and donation of these surplus embryos by the IVF patients to other infertile couples is one among several embryo disposition options that the law permits. However, judges and legislators in many nations have found regulation of embryo donation to be anything but simple.

Under most modern legal systems, the right to abortion at least during the early stages of pregnancy is well-established: earliest unborn human beings have no legal right to life as against the procreative and privacy rights of their progenitors. Yet, while embryos are more primitive than fetuses in utero, the legal justifications for abortion such as the mother's bodily integrity and right not to procreate may not apply to the adoption of frozen, extracorporeal embryos.

Moreover, the fundamental legal status of embryos remains largely unsettled. The law in most nations does not treat the unborn as full constitutional persons, so it seems incoherent to call a two-celled embryo a person and apply traditional adoption law when it is donated for implantation in another woman. But many also recoil at the idea of treating these embryos as pure property to be transferred, divided, or destroyed according to the wishes of their progenitors. Several US states have tried to forge a middle way and treat embryos as "special property" because of their potential to become children (Tennessee Supreme Court, 1992, 597), but ultimately even "special property" is property and can be disposed of and freely transferred.

In this chapter, I aim to show that embryo adoption may be carried out whether embryos are treated (1) as constitutional persons who cannot be owned and who are entitled to the same legal protections as born children, or (2) as property which lacks legal rights of its own and can be disposed of according to the wishes of its owners. In short, under embryo-as-person treatment, IVF practice would be limited to creating

only the number of embryos in a cycle that could and would safely be transferred to the maternal womb during that cycle. The constitutionally protected right to life would dictate that currently frozen embryos be either cryopreserved indefinitely or transferred to maternal wombs to continue their natural development which was artificially interrupted. In fact, Germany and Italy, both of which treat the embryo as a legal person, have already legislated to this effect. In embryo-as-person systems, frozen embryos would be adopted as any other child with some legal variations reflecting the different timing and technology involved. Abandoned frozen embryos might even fall under abandonment statutes, which provide that children whose genetic parents neglect to care for them come into the care of the state, and then the state places them in adoptive families.<sup>1</sup> Courts would be involved every step of the way, from safeguarding embryos' constitutional right to life to overseeing their placement with those who offer them gestation, a family and a home.

On the other hand, in embryo-as-property legal systems such as most US states, the UK and Australia, embryo "donation" rather than "adoption" is the term of choice. The law requires only that the embryos' owners, usually their genetic parents, consent to their transfer to recipient parents. Consenting owners can sign away their embryos to one of several disposition options, including donation to other couples. Only statutory law – shaped by public policy concerns against outright abuse of this "special property" – can limit embryo disposition options. Most IVF patients who consider donation change their minds before their embryos are ever actually donated, so that only about 2% of IVF patients end up donating their embryos to another couple (Crockin, 2005). In embryo-as-property legal systems, courts ground themselves in embryo disposition statutes, base decisions as often as possible on disposition contracts, and referee among the competing interests of embryo owners, IVF clinics, and embryo researchers.

In this chapter, I begin in the USA, discussing the inapplicability of US Supreme Court precedent to the question of frozen embryos and explaining the various ways in which state statutory law regulates embryo adoption. I then discuss the anti-embryo

---

<sup>1</sup> In traditional adoptions in the USA, a court's finding of abandonment or desertion by the natural parents may dispense with the requirement of consent for the termination of parental rights of the biological parents. Similarly, if IVF parents have abandoned their embryos (whether by choice or because of death), consent may not be legally required. Although US states differ somewhat in their definition of abandonment, courts generally look for manifest intent to sever parental relations. Some factors which presume abandonment are the natural parent's failure to financially support the child and failure to visit or attempt to otherwise communicate with the child in the 6 months leading up to the filing of the adoption petition. (Adoption: 2003, n. 5). Also, abandonment can be found where biological parents fail to manifest substantial expressions of concern that show that the parent has a deliberate, intentional, and good faith interest in maintaining a parent-child relationship (ibid., n. 11). The same abandonment standards can be applied to extracorporeal embryos if the embryos are treated by the law as persons. IVF clinics report that many parents of frozen IVF embryos have failed to maintain any contact with the clinics where their embryos are stored and have for years failed to pay basic storage fees to support their embryos. This behavior meets – even exceeds – the requirements of the abandonment statutes.

adoption trend that has arisen in state courts. I conclude this section by examining current embryo adoption practice in the USA.

Next, I turn to the UK and Australia, both embryo-as-property systems, where embryo use and disposition are regulated at the national level and anything goes as long as the embryo owners provide their continuing consent. I end with a discussion of embryo adoption in Germany and Italy, both embryo-as-person legal systems. In Germany and Italy, surplus embryos may not be created, and extracorporeal embryos may be handled only in a manner that furthers their preservation, i.e., implanted into a maternal womb. While embryo-as-person and embryo-as-property systems differ markedly in their treatment of extracorporeal embryos, I conclude by showing that embryo adoption can be carried out under either legal framework.

In this chapter, I use the term “embryo donor” to mean the individual(s) who commissioned the IVF treatment and are presently donating their embryos, regardless of whether their embryos are the product of their own gametes or donor gametes. I use the term “gamete donor” where it is necessary to specify the origin of the gametes used to create the embryo. Finally, I use “embryo owner” to refer more generally to the commissioning couple or individual.

## 2 United States

### 2.1 Federal Case Law

In the USA, extracorporeal IVF embryos pose a real legal challenge because of their relationship (or lack thereof) to fetuses in utero. The abortion cases affirm that “the unborn have never been recognized in the law as persons in the whole sense,” because some legal interests such as inheritance or reception of property are only perfected once a child is born (US Supreme Court, *Roe v. Wade*, 1973, 162).<sup>2</sup> Since there is no legal or social consensus as to whether the unborn child is a person, a state cannot choose to define the fetus as a person if so doing will allow the state to regulate in a way that interferes with a mother’s ability to choose to terminate the fetus in the interest of her life or health (US Supreme Court, *Roe v. Wade*, 1973, 162). According to the seminal abortion cases of *Roe v. Wade* (1973), *Doe v. Bolton* (1973) and *Planned Parenthood v. Casey* (1992), however, the state has an interest in the *potential life* of the fetus. Only at the point of viability – the point at which a fetus could live outside the womb – does this fetal interest become strong enough for a state to proscribe some abortions (US Supreme Court, *Planned Parenthood*

---

<sup>2</sup>In a well-known embryo inheritance case, Americans Mario and Elsa Rios died in an airplane crash, leaving behind embryos frozen in a clinic in Melbourne, Australia and a substantial fortune. Surrogates offered to gestate the embryos expecting to get a portion of the estate if any of the embryos were born alive. The right to inherit is perfected at birth, not before birth, even in this case of frozen embryos.

v. *Casey*, 1992, 860). But even post-viability abortion regulations may be stricken for imposing an undue burden on the woman's right to an abortion if those regulations lack a health exception allowing for "therapeutic" abortions (US Supreme Court, *Planned Parenthood v. Casey*, 1992, 874).

However, *if the mother's constitutional rights are not at stake*, the legal status of the unborn child is a matter not of federal constitutional law but of state law, and *the state can choose to exercise its interest in protecting the potential life of the unborn child* (US Supreme Court, *Roe v. Wade*, 1973, 162–163). I will attempt to explain in the following paragraphs that, in the case of an extracorporeal embryo, the mother's constitutional rights – namely her bodily integrity and her right to decide when to procreate and become a parent – are not at stake.

First, in *Roe v. Wade*, the woman's bodily autonomy is an important element of her right to privacy upon which the outcome of the case hinges. However, as the Court of Appeals of New York recognized in the landmark IVF case *Kass v. Kass* (1998, 177), it is a scientific fact that a woman's bodily integrity is not involved in consideration of the legal status of extracorporeal embryos. The extracorporeal embryos are precisely that: *extracorporeal*, outside the body. In embryo adoption, the IVF mother is being relieved of all bodily burdens with respect to the child, since the child is adopted by another willing couple. The bodily integrity reasoning of *Roe* does not apply to embryo adoption.

The second *Roe* right that I will discuss is the procreative right. The right of an individual to decide where and when to procreate is well-established in Supreme Court precedent, originating in *Eisenstadt v. Baird* (US Supreme Court, 1972, 453):

If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.

The right *not* to procreate took its foothold in *Griswold v. Connecticut* (US Supreme Court, 1965, 479) as the right of married couples to use contraception; it was reaffirmed in *Roe v. Wade* (US Supreme Court, 1973, 113) as the right to procure an abortion.

Is this right not to procreate properly invoked to deny an embryo co-owner or an outside party the opportunity to adopt the embryos? The prospect of having unknown genetic offspring born to adoptive couples may impose serious psychological burdens on the genetic parents of IVF embryos. Yet the Court in all its "reproductive rights" cases, and explicitly in *Roe*, has defined the right to avoid procreation as the right to avoid the *gestational* and *rearing* burdens that procreation entails, including the right not to be legally compelled to gestate or to give financial, emotional, or other support to a child. *Roe* itself classified the harms of procreation as follows:

The detriment that the State would impose upon the pregnant woman by denying this choice altogether is apparent. Specific and direct harm medically diagnosable even in early pregnancy may be involved. Maternity, or additional offspring, may force upon the woman a distressful life and future. Psychological harm may be imminent. Mental and physical health may be taxed by child care. There is also the distress, for all concerned, associated with the unwanted child, and there is the problem of bringing a child into a family already unable, psychologically and otherwise, to care for it. In other cases, as in this one, the

additional difficulties and continuing stigma of unwed motherhood may be involved. All these are factors the woman and her responsible physician necessarily will consider in consultation. (US Supreme Court, *Roe v. Wade*, 1973, 153)

These considerations refer only to the burdens imposed on a woman when she is compelled to gestate and rear the child that she is already carrying. The concurring opinion in *Roe* cited a Connecticut case describing a woman's interests in terminating a pregnancy as "the interests of a woman in giving of her physical and emotional self during pregnancy and the interests that will be affected throughout her life by the birth and raising of a child" (*Roe v. Wade*, 1973, 170). Neither in *Roe* nor in any Supreme Court reproductive rights cases has the right to a void procreation been defined solely as the right to a void the psychological discomfort of having an unknown offspring born to another person or as the right to destroy extracorporeal, biologically related offspring. According to John A. Robertson, the Court is "unlikely to expand the menu of unwritten fundamental rights to include the purely psychosocial interest in not having biological offspring" when parents are unwilling to gestate their embryos themselves (Robertson, 1990, 500).

A final challenge that frozen embryos pose to the abortion framework centers on the "viability" line drawn in both *Roe v. Wade* (US Supreme Court, 1973, 163–165) and *Planned Parenthood v. Casey* (US Supreme Court, 1992, 860). *Roe* and *Casey* claim that viability is a turning point, after which the state's interest in protecting unborn life could conceivably trump a woman's right to an abortion. The Court's policy decision to prefer the health of the mother over the life of the fetus is based in part on the fetus's condition of dependence – because the fetus is dependent on the mother, it does not have the right to insist on its interest being preferred to the woman's interest, and only at viability when it becomes independent do its rights potentially trump those of the mother.

Yet extracorporeal, IVF embryos are, in a strict sense, viable before implantation in the mother (Krentel, 1985, p. 286). Viability is defined in *Roe* as life outside the mother's womb, and the developing IVF embryo is engaging in a life-process before being frozen or before entering the mother's womb (Krentel, 1985, p. 286). In the Petri dish after sperm and egg unite to form the new human embryo, the embryo divides and begins differentiating until it reaches the four- or eight-cell stage, directing its own development toward infancy and adulthood. Artificial wombs soon may render embryos viable outside of maternal wombs for all 9 months. If the state has a compelling interest in the life of the unborn child when it is viable, then the state may also have an interest in the viable early human embryo that develops on its own from fertilization through several stages of differentiation.<sup>3</sup>

*Roe v. Wade* and its progeny are clear on the strength of fetal rights, but the reasoning on which *Roe* relies appears to be fundamentally inapplicable to frozen, extracorporeal embryos. Since parents' rights of bodily integrity and procreative liberty, as they have been defined by Supreme Court precedent, appear not to be at stake in adoption of extracorporeal embryos, states can protect the "potential life" of these embryos.

---

<sup>3</sup> See Kaczor, this volume.

This gives state legislatures and lower courts great leeway – and little guidance – in regulating embryo disposition. For example, as I discuss later in this chapter Louisiana statutory law grants greater protection to extracorporeal embryos than any state is permitted under current abortion precedent to grant to first trimester fetuses.

## **2.2 Federal Regulations**

The Food and Drug Administration (FDA) has limited jurisdiction over ART procedures by way of the federal Food, Drug, and Cosmetic Act and the Public Health Service Act. Under these regulatory powers, the FDA recently completed rulemaking that puts in place requirements to help prevent the transmission and spread of communicable disease by human cells, tissues, and cellular and tissue-based products. Since embryos fall into these categories, the FDA regulations also impact embryo donation. Three rules – entitled “Human Cells, Tissues, and Cellular and Tissue-Based Products; Establishment Registration and Listing,” “Eligibility Determination for Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products,” and “Current Good Tissue Practice for Human Cell, Tissue, and Cellular and Tissue-Based Product Establishments; Inspection and Enforcement” – comprise 21 CFR Part 1271, effective May 25, 2005.

These rules in their original form would have limited the number of embryos available for adoption by requiring the same screening for sexually intimate couples as is required for anonymous gamete donors. After the ART community expressed concern and before 21 CFR Part 1271 went into effect, the FDA relaxed this requirement in an Interim Final Rule, which also became effective May 25, 2005.

The revised rule exempts from screening and testing frozen embryos belonging to sexually intimate partners that were originally exempted from the donor eligibility requirement and are now intended for donation. Sexually intimate partners who complete their families can donate their leftover frozen embryos to other couples even though they were not screened at the time their gametes were recovered (21 CFR Part 1271.90(a)(2) and (4): 2005). If the donors are never screened and tested, usually because of death or refusal of one partner to be tested, the embryo must be labeled as unscreened according to § 1271.90(b)(2) and (3). The treating physician then must warn recipients of potential risks, but the embryo may still be donated.

While the original FDA regulations would have disqualified from adoption embryos belonging to unscreened, sexually intimate couples, under the revised rules, these embryos are eligible for donation. The FDA regulation impacts only screening and not consent requirements.

## **2.3 State Statutory Law**

Development of statutory law has lagged behind developments in ARTs, especially since Supreme Court precedent provides little direction. Legislators now aim to

regulate the fates of the some 400,000 embryos already frozen in US fertility clinics while securing disposition arrangements for embryos created in the future. Twenty-one of the fifty states have laws pertaining to embryo storage, disposition, or parentage, and ten of these mention embryo donation or adoption explicitly. Please refer to Table 1, “State Statutory Law Relating to Embryo Adoption.”

California makes it a criminal offense to implant embryos into a recipient who is not the donor without the signed written consent of both the donor and the recipient: California Penal Code § 367 g (1996) prohibits the use of an embryo in any manner not agreed to by the IVF patients in their consent form, and a signed consent form is always required before an embryo is transferred to the womb of the patient. Embryo research is explicitly permitted in California under California Health and Safety Code § 125320 (2003) as long as the donors consent. Other state statutes mention research as a disposition option but do not specifically permit it.

Connecticut, Massachusetts, Maryland, and New Jersey also regulate embryo disposition. They require a physician who provides a patient with IVF to give information sufficient to allow that patient to make an informed and voluntary choice regarding the disposition of any embryos. Embryo donation must be one of these options, along with storing, donating for research purposes, or otherwise disposing of or destroying unused embryos. And in its section on birth control, Kansas expressly provides that frozen embryos can be discarded or used for research.

In contrast to these states’ consent-based approaches, Louisiana statutory law treats embryos as persons and mandates that all embryos remain frozen or be transferred into the womb of the IVF patient or an adoptive mother. As I discussed above, US Supreme Court precedent does not clearly prevent Louisiana from defining extracorporeal embryos as biological or juridical persons for purposes of regulating their use and disposition. *Roe v. Wade* (US Supreme Court, 1973, 162) only stated that unborn children have never been recognized by the law as persons in the “whole sense.” Louisiana Revised Statutes § 9:123 (1986) avoids conflict with abortion law by explicitly limiting the scope of its embryo-protective laws to extracorporeal embryos: “An in vitro fertilized human ovum exists as a juridical person until such time as the in vitro fertilized ovum is implanted in the womb; or at any other time when rights attach to an unborn child in accordance with law.”

Louisiana law provides that an IVF embryo is a biological human being which is not the property of the IVF physician, the clinic, or the gamete donors (Louisiana Revised Statutes § 9:126, 1986). The IVF patients must serve as the guardian of the embryo’s rights, or else the physician or clinic serves as a temporary guardian until “adoptive implantation” can occur (*ibid.*). The IVF clinic and physicians are held “directly responsible for the in vitro safekeeping of the fertilized ovum” during this time period. (Louisiana Revised Statutes § 9:127, 1986). There is no statutorily specified time in which the IVF patients must decide whether to implant or donate their embryos, but, as discussed below, the best interest of the embryo is the standard in decision-making. If the IVF patients renounce their parental rights, the embryo becomes available for adoptive implantation in accordance with written procedures of the facility where it is stored (Louisiana Revised Statutes § 9:130, 1986). The adoption is considered statutorily complete when, as in traditional adoptions, a married couple executes a notarial act of adoption of the IVF embryo and then birth occurs (*ibid.*).



**Table 1** State statutory law relating to embryo adoption<sup>1</sup>

	Disposition options	Parentage	Commercial arrangements for embryos	Other
<b>California</b>	Criminal act to use someone’s embryos in any manner without their consent (California Penal Code § 367 g). IVF patients must receive form that sets forth advance directives for the disposition of frozen embryos. Patients must be offered options of storing any unused embryos, donating, discarding, or donating for research (California Health and Safety Codes § 125315)			
<b>Colorado</b>		Former spouse may withdraw consent to assisted reproduction any time before transfer of embryos. If spouse dies before transfer of embryos, he is not parent of child unless he consented on record (§ 19-4-106)		
<b>Connecticut</b>	IVF provider must provide disposition info. Patients must be given option to donate to research, donate to another couple, store embryos, or discard them. Written consent to donate embryos to research is required CT Gen. Stat. § 19a- 32d through 32 g			
<b>Delaware</b>		Adopts UPA: Birth mother is legal mother, and her husband is legal father. A donor is not a parent of a child conceived by ARTs including embryo donation. In surrogacy, a hearing should take place before the surrogacy begins to declare the intended parents the legal parents § 102, 702		

<b>Florida</b>	Fla. Stat. Ann. § 742.14–742.17 requires written agreement providing for embryo disposition in the event of a divorce, the death of a spouse, or any other unforeseen circumstance. Absent written agreement, couple jointly shares decision-making		Fla. Stat. Ann. § 63.212 regulates preplanned adoption agreements, including IVF and embryo donation
<b>Kansas</b>	Expressly provides that frozen embryos can be destroyed by discarding or research (§ 65–6702)		
<b>Louisiana</b>	Embryo is a juridical and biological person (§ 9:126, 129); temporary cryopreservation with ultimate transfer to womb ONLY	If IVF patients renounce their parental rights, embryo is available for adoptive implantation. The IVF patients may choose another married couple as long as no \$\$ exchanged, or the IVF clinic can institute adoption proceedings for the embryo. Adoption completed at birth (§ 9:130)	Prohibited (§ 9:122)  Disputes over embryo to be resolved based on best interests of the embryo (§ 9:131). § 9:133 embryo has no inheritance rights unless born alive (§ 9:133)
<b>Maryland</b>	IVF doctor must provide patients with the option to store, discard, donate embryos to research, donate embryos for adoption, or donate embryos to the fert. clinic. Written consent required for donation to research (Md. Code Business and Economic Development § 5–2B-10)		Md. Ann. Code art. 70, § 83A, s5–2B-10 provides individuals with information on embryo adoption
<b>Massachusetts</b>	IVF doctor must provide info to allow patient to make an informed and voluntary choice regarding the embryo disposition, including storing, donating to another person, donating for research purposes, or otherwise disposing of or destroying any unused pre-implantation embryos (Mass. Gen. Laws Chapter 111L)		

**Table 1** (continued)

	Disposition options	Parentage	Commercial arrangements for embryos	Other
<b>New Jersey</b>	IVF patient must be given options of storing, donating to another person, donating for research, or other disposition (NJ Stat. § 26:2 Z-2)			
<b>New York</b>				Embryos shall not be created solely for donation, except at the request of a specific patient who intends to use embryos for her own treatment (10 NYCRR 52-8.7)
<b>North Carolina</b>		Adopts UPA		
<b>North Dakota</b>		The consent to ART may be withdrawn in a record any time before placement of embryos. An individual who withdraws consent is not a parent of resulting child (N.D. Cent. Code § 14-20-64)		
<b>Ohio</b>		Birth mother is the child's legal mother, and the birth mother's husband is the presumed father unless he can rebut this presumption by clear and convincing evidence that he did not consent to the embryo donation. Embryo donors have no rights or duties to donated embryo (Ohio Rev. Code 3111.97)		

**Oklahoma**

Adopts UPA. Written consent of all parties to embryo transfer required and filed with court; filed consents are confidential unless court order to access them. Any child or children born as a result of a embryo donation considered same as a naturally conceived legitimate child of the recipient husband and wife; husband and wife donors relieved of all parental responsibilities for resulting child; embryo donors have no right, obligation or interest to child born as a result of the donation or to the property of the child by descent or distribution, and child born from embryo donation has no right or interest with respect to donors Okla. Stat. tit. 10, § 556

Prohibited (Okla. Stat. tit. 10, § 556)

**Tennessee**

“Parent” is defined as “the biological mother or biological father of a child, regardless of the marital status of the mother and father” Tenn. Code Ann. § 36-2-302(5). “Biological parents” are “the woman and man who *physically or genetically conceived* the child” Tenn. Code Ann. § 36-1-102(10) (2001)

**Texas**

Adopts UPA at Tex. Family Code Ann. § 160.001, et seq. Requires a man and woman to sign consent to assisted conception. If the father does not sign, however, it does not necessarily mean that he is not the legal father

**Table 1** (continued)

Disposition options	Parentage	Commercial arrangements for	
		embryos	Other
<b>Utah</b>	Adopts UPA		
<b>Virginia</b>	In ARTs: (1) The gestational mother is the child’s mother. (2) The husband of the gestational mother is the child’s father, unless declaration of invalidity or annulment of marriage obtained after performance of the ART. (3) A donor is not the parent of a child conceived through assisted conception, unless the donor is the husband of the gestational mother Va. Code § 20–158(A)		
<b>Washington</b>	Adopts UPA. A donor is not a parent of a child conceived by means of assisted reproduction. If a husband provides sperm for, or consents to, assisted reproduction by his wife, he is the father of a resulting child born to his wife Wash. Rev. Code § 26.26.705, 710		
<b>Wyoming</b>	Adopts UPA. Wyo. Stat. § 14-2-401, et seq. creates the Wyoming Uniform Parentage Act. The law defines “assisted reproduction” to include donation of embryos (§ 14-2-402). A donor is not a parent of a child conceived by means of ARTs. A man who provides sperm for, or consents to, ART with intent to be the parent of her child, is the parent of the resulting child § 14-2-902, 903		

<sup>1</sup>Some information in this chart is adapted from a compilation by the National Conference of State Legislatures (2007).

Under Louisiana Revised Statutes § 9:130 (1986), which lays out duties of donors, an IVF embryo is designated as a “juridical person,” a designation usually used for businesses. As a juridical person, an embryo has a right not to be destroyed, it can sue and be sued, and it cannot be owned by the IVF patients, who owe it a high duty of care. Embryos cannot be bought or sold (§ 9:122), and inheritance rights will not flow to the embryo as a juridical person until birth or at any other time when rights attach to an unborn child in accordance with law (Louisiana Revised Statutes § 9:133, 1986).

Finally, the judicial standard for resolving disputes over the embryo is the best interests of the embryo, which, the statute provides, requires continuation of the embryo’s life when at all possible (Louisiana Revised Statutes § 9:131, 1986). The “best interest of the embryo” principle parallels the “best interests of the child” that increasingly has become the standard for deciding modern family law disputes. If the embryo is treated as a person, applying the best interests of the child standard is logical and simplifies embryo disposition: continuation of the embryo’s life wherever possible. However, since property does not bear rights or interests, and since all other US jurisdictions view IVF embryos as property, the “best interest” standard cannot be applied elsewhere.

Like Louisiana, Florida and Oklahoma explicitly prohibit embryo donations that are part of commercial arrangements: No price can be paid for the transfer of embryos or for the relinquishment of parental rights. Notably, Florida also is one among several states that prohibits agreements to adopt prior to the child’s birth. This is one respect in which adoption law cannot be applied to the embryo adoption context, since in embryo adoptions an adoption agreement necessarily is made prior to the child’s birth.

Many of these state statutes deal not only with embryo disposition but also with parental rights to the embryo. The Uniform Parentage Act (UPA) (2002), a model code of parentage law created to act as a guide for state legislators, has been adopted in Delaware, North Dakota, Oklahoma, Texas, Utah, Washington, and Wyoming. The UPA upholds the traditional rule that the birth mother of a child is the legal mother, and her husband is the legal father. Birth is the key point in establishing parentage. The UPA further states that a donor is not a parent of a child conceived by means of assisted reproduction, and assisted reproduction is defined to include embryo donation. The 2002 UPA also specifies that, in the case of embryos created as a part of a surrogacy arrangement, a hearing should take place before the surrogacy commences to validate the surrogacy agreement and declare the intended parents the legal parents of any child who is born. This pre-birth declaration of parental rights may serve as a good model for the transfer of parental rights prior to birth in the embryo adoption context as well (Kindregan & McBrien, 2004).

Without adopting the UPA, Ohio applies traditional parentage principles explicitly to embryo donation. In Ohio, a birth mother is the child’s legal mother, and the birth mother’s husband is the presumed father unless he can rebut this presumption by clear and convincing evidence that he did not consent to the embryo donation. Colorado and North Dakota, in contrast, establish parentage to a certain extent at the time the embryo is transferred to the womb. The consent of a woman or a man

to assisted reproduction may be withdrawn by that individual at any time before placement of eggs, sperm, or embryos, and any individual so withdrawing consent is not a parent of the resulting child.

As will be shown in the next section, establishing legal parentage at the time of birth may not be early enough – even in the presence of agreements among donors and recipients that purport to transfer parental rights at the time the embryos are implanted in the adoptive mother. Courts have invalidated embryo donation agreements between spouses where one spouse changes his mind about the donation prior to implantation in a womb. If the adoptive parents' rights are not secure until birth or later, embryo donors may be able to change their minds about the donation and reassert their parental rights, relegating the adoptive mother to the status of a surrogate mother with no rights. Laws must fix parentage *at the time of embryo donation or transfer* in order for embryo donation to be a legitimate disposition option for all parties involved.

In sum, all states but Louisiana treat embryos as property to be freely transferred and disposed of, and most of these explicitly provide for embryo donation as one among several disposition options. Embryo donation for adoptive implantation is permissible in all these states as long as donors and donees give their informed consent and the donation is not part of a commercial arrangement. The Uniform Parentage Act guides state legislators in establishing parental rights to the embryo, but the current UPA does not adequately protect the rights of recipient parents in embryo donation.

### 2.3.1 State Court Decisions

The inapplicability of Supreme Court precedent and a lack of clear statutory law governing the use of embryos have left judges to apply broad principles from constitutional law and abstract notions of public policy to the question of frozen embryos. While the facts and reasoning in these cases vary, the outcomes are strikingly similar. Embryo disposition agreements will control in a dispute between embryo owners – except where a past disposition agreement provides for embryo donation and one of the parties to the agreement has changed his mind about embryo donation and decided he wishes not to procreate.

Virginia and New York district courts, unlike most other courts, have held outright that embryos are *pure* personal property, like any other human tissue, and are treated under the law as such. In *York v. Jones* (US District Court for the Southern District of New York, 1989, 421–429), the District Court for the Southern District of New York determined that frozen embryos existed in a bailor–bailee relationship to the clinic where they were stored. This relationship placed an obligation on the Jones Clinic to return this property to the Yorks, the owners of the embryos. That court relied on a statement from the American Fertility Society: “The gametes [referring to post-IVF embryos] are property of the donors,” and, “the donors therefore have a right to decide at their sole discretion the disposition of these items . . .” (ibid.). In *Del Zio v. Columbia Presbyterian Hospital* (US District Court for

the Southern District of New York, 1978, No. 74 Ci v. 3588), the District Court for the Southern District of New York sought to determine the market value of the embryos as property when awarding the parents damages for their loss of the embryos. Any sentimental value the embryos held to the parents was disregarded in the outcome of the case. Unlike these two courts, most other courts have regarded embryos as bearing some “special property” status and have then attempted to weigh prior disposition agreements against present feelings toward disposition of this special type of property.

The first embryo disposition case, *Davis v. Davis* (Tennessee Supreme Court, 1992, 588), establishes the principle that, where there is no disposition agreement, a party wishing not to procreate usually will prevail. This case also indicates the difficulty of adopting frozen embryos in Tennessee: in the absence of a prior agreement, if either party decides against donation, the embryos may not be donated. IVF patients Mary Sue and Junior Davis divorced 2 months after their IVF treatments, leaving no disposition agreement for their embryos. By the time the case reached the Tennessee Supreme Court, Mary Sue wanted to donate the embryos to another infertile couple, but Junior did not want to become a parent and wanted them destroyed. This court referred to *Roe v. Wade* in reasoning that the embryos were not persons<sup>4</sup> and then professed to take the intermediate view of embryos, stating:

We conclude that preembryos are not, strictly speaking, either ‘persons’ or ‘property,’ but occupy an interim category that entitles them to special respect because of their potential for human life. It follows that any interest that Mary Sue Davis and Junior Davis have in the preembryos in this case is not a true property interest. However, they do have an interest in the nature of ownership, to the extent that they have decision-making authority concerning disposition of the preembryos, within the scope of policy set by law. (Tennessee Supreme Court, 1992, 597)

This “special property” language differs from the pure property language of *York* and *Del Zio*. Terming the embryos special property is helpful because it appeals to the instinct that embryos should be revered for their special place in reproduction and their life potential. However, “special property” status is of little help legally. It is hard to see how having an ownership interest and retaining decision-making authority over the embryos differs from having a property interest in underlying principle and in its legal effect on embryo disposition.

The court then determined that, because there was no prior agreement as to the embryos’ disposition, the competing interests of the parties in using or destroying the embryos should be weighed to decide the fate of the embryos. The court

---

<sup>4</sup>The Tennessee Supreme Court in *Davis v. Davis* stated (Tennessee Supreme Court, 1992, 595): ‘In *Roe v. Wade*, 410 U.S. 113 (1973), the US Supreme Court explicitly refused to hold that the fetus possesses independent rights under law, based upon a thorough examination of the federal constitution, relevant common law principles, and the lack of scientific consensus as to when life begins. The Supreme Court concluded that ‘the unborn have never been recognized in the law as persons in the whole sense.’

The unborn are only considered potential lives, and the state only has an interest in their potential life after the point of viability. *Webster v. Reproductive Health Services*, 492 US 490, 529 (1989).



decided that, because Mary Sue presumably had another reasonable opportunity to become a parent – even if by adoption – Junior’s wish not to procreate by way of embryo donation should trump. The court asserted that the “joys of parenthood” cannot outweigh the “relative anguish of a lifetime of unwanted parenthood” (Tennessee Supreme Court, 1992, 601) and stated the following rule:

The party wishing to avoid procreation should prevail, assuming that the other party has a reasonable possibility of achieving parenthood by means other than use of the preembryos in question. If no other reasonable alternatives exist, then the argument in favor of using the preembryos to achieve pregnancy should be considered. However, if the party seeking control of the preembryos intends merely to donate them to another couple, the objecting party obviously has the greater interest and should prevail. (Tennessee Supreme Court, 1992, 604)

In Tennessee, where there is no embryo disposition agreement, as long as the party wishing to use the embryos has another reasonable opportunity to become a parent – and it is hard to imagine a situation where there is no other opportunity – the party wishing not to procreate will prevail. The party wishing not to procreate prevails where the other owner wishes to donate the embryos for adoption.

The Tennessee Supreme Court’s discussion of the “right not to procreate” in relation to already-developing embryos is appropriate only within the embryo-as-property framework. In legal systems where the human embryo is viewed as a very young human person, parents of IVF embryos cannot invoke their “right not to procreate” after their egg has been fertilized in vitro. Upon completion of IVF, the couple has procreated – a new human being has resulted with the capacity to direct its own development from the one-cell embryo stage through birth and into adulthood.

In *Kass v. Kass* (New York Court of Appeals, 1998, 174), the New York Court of Appeals discussed whether the genetic mother of embryos may adopt her own embryos when she divorces, where the couple’s disposition agreement provides otherwise. On the question of the status of the embryos, the Court here cited *Roe v. Wade* (US Supreme Court, 1973, 162), finding that embryos (called “pre-zygotes” by this court) are not recognized as “persons” for constitutional purposes, but said it had no cause to decide whether the embryos were entitled to special respect (New York Court of Appeals, 1998, 179). The Court then focused its inquiry on who had dispositional authority over the embryos, thereby conceding their property status.

Maureen and Steven Kass divorced three weeks after their IVF treatment, leaving frozen embryos and an agreement stating that, in the event of disagreement as to disposition of the frozen embryos, they would be “disposed of by the IVF program for approved research in investigation” (New York Court of Appeals, 1998, 177). Their divorce agreement affirmed that the embryos should be disposed of according to that prior agreement. However, Maureen notified the IVF clinic that she opposed destruction of the embryos and filed suit for sole custody so that she could undergo another implantation procedure. Steven counterclaimed that the disposition agreement should be upheld. The New York Court of Appeals ultimately decided that, since the parties disagreed between themselves, in spite of one parent’s wish to use the embryos to become a parent, the prior agreement would govern. It reasoned:

Knowing that advance agreements will be enforced underscores the seriousness and integrity of the consent process; advance agreements as to disposition would have little purpose if they were enforceable only in the event the parties continued to agree. To the extent possible, it should be the progenitors – not the State and not the courts – who by their prior directive make this deeply personal life choice. (New York Court of Appeals, 1998, 180)

To New York's highest court, prior written agreements to donate embryos for research trump later changes of heart desiring to give them a chance at life. Even a mother wishing to gestate her own embryos and rear any born-alive child is denied this opportunity when a prior written contract dictates otherwise.

The Massachusetts Supreme Court in *AZ v. BZ* (2000, 151–162), when compared to the New York Court of Appeals in *Kass v. Kass*, illustrates the extent to which judges will use raw public policy to thwart embryo donation based on the right not to procreate. In this case, the husband and wife had signed an agreement prior to their divorce that provided that, in the event of separation, the embryos would be returned to the husband or wife for implantation. After they divorced, the wife wished for the embryos to be transferred to her womb according to their agreement, but the husband had changed his mind and filed for an injunction to stop her. The court held that the couple's prior agreement was not binding, because it would violate public policy to require the husband to become a parent over his present objection by enforcing the prior consent form against him (Massachusetts Supreme Court, 2000, 162). The court reasoned:

[W]e would not enforce an agreement that would compel one donor to become a parent against his or her will. As a matter of public policy, we conclude that forced procreation is not an area amenable to judicial enforcement. It is well-established that courts will not enforce contracts that violate public policy. (Massachusetts Supreme Court, 2000, 160)

The court then proceeded as if no agreement existed and found that the husband's interest in not procreating was stronger than his wife's interest in procreating (Massachusetts Supreme Court, 2000, 162). The court in *J.B. v. M.B.* (New Jersey Supreme Court, 2000, 613–620) held similarly, suggesting that disposition agreements were normally enforceable, except that when a party divorces, the party wishing not to procreate should prevail in spite of the terms of a disposition agreement.

Juxtapose this reasoning with that of the New York court in *Kass*, which stated (1) that advance agreements have little purpose if they are enforceable only when parties continue to agree, and (2) that it should be the progenitors, not the state or courts, who by their prior directive decide the fate of their embryos (New York Court of Appeals, 1998, 180). The reasoning in these two cases is remarkably inconsistent but the outcomes are the same: The court deciding in favor of the party wishing not to procreate, in order to spare him “the relative anguish of a lifetime of unwanted parenthood” (Tennessee Supreme Court, 1992, 601).

These cases show that, in some state courts, the desire not to procreate always trumps an interest in procreating – even in the presence of a prior written agreement providing for donation of the embryos to a gamete co-donor or to an outside party. This state court trend limits the number of embryos available for donation, since both parties must continue to agree in order for donation to be approved. Moreover,

it makes embryo donation less appealing to prospective adopters. If either donor can renege on an agreement to donate at any time, embryo donations may be tenuous at least until the moment of birth when the law presumes the parenthood of the birth parents.

This indicates the inadequacy of traditional adoption and parentage law – which generally consider the birth mother to be the legal mother – in the context of embryo donation.<sup>5</sup> In embryo donation, who is the legal parent during the pregnancy, from the time of embryo transfer until birth? If there is not a definite change in legal parentage at the time of embryo transfer, are the donors by implication still the legal parents throughout the pregnancy? If so, might courts uphold the right of one of them to change his mind and decide he wishes not to procreate after embryo transfer and prior to birth? The status of the adopting woman could change, during the course of her pregnancy, from adoptive mother to a surrogate womb with no rights. This uncertainty as to parentage, resulting from inadequate state parentage law and fueled by policy judgments in the judiciary, prevents embryo donation from being a legitimate disposition option for both embryo donors and recipients. Legislators may find a better model in the UK (Human Fertilisation and Embryology Act, 1990, 27(1)), to be discussed below, where the law simply declares that the recipient mother becomes the legal mother at the time the embryo is transferred to her womb – 9 months earlier than the recipient mother becomes the legal mother in most states in the USA. This would provide the level of legal certainty that befits a commitment as great as adopting an embryo.<sup>6</sup>

I should note also that other state courts are not bound to follow suit in making the present desire not to procreate a trump card as in *Kass v. Kass*, *Davis v. Davis* and *A.Z. v. B.Z.* Other courts could weigh competing rights differently, especially since US Supreme Court cases provide no clear precedent with respect to extracorporeal embryos and the desire not to procreate. The *AZ v. BZ* court invalidated a prior written agreement on the basis that it would violate public policy to uphold a contract requiring the husband to become a parent over his present objection. Might not another court be able to invalidate a prior agreement disposing of embryos through research or destruction by saying it violates public policy to deny a biological parent the opportunity to procreate using his or her own already-created embryos? Questions regarding adoption of frozen embryos are far from settled in the American judiciary.

---

<sup>5</sup> As I discuss in this chapter, adoption law is also inadequate for embryo adoption in that it prohibits the making of any contract for adoption prior to birth. After the mother gives birth and voluntarily signs a termination of her parental rights, most but not all states allow her a specified time frame in which she may revoke her consent to adoption. The details of this process and the length of time vary according to state law.

<sup>6</sup> An additional layer of protection for parental rights could be provided in each case by a hearing to validate the contractual pre-birth transfer of rights to the embryo. As discussed above, the UPA suggests such a hearing for surrogacy arrangements to secure parental rights before the arrangement is underway (Kindregan and McBrien, 2004, 169).

### 2.3.2 United States Conclusion

In sum, US law permits embryo adoption, but not because the embryo is a constitutional person. Embryo adoption, termed embryo donation in US law, is one among several disposition choices made available to IVF patients under state laws. The patients' disposition agreement serves as a contract among themselves and the fertility clinic which governs the embryos' use. This contract will bind the parties and seal the fate of the embryos, except some courts will invalidate an agreement for embryo donation if one party later decides he does not wish to procreate in the form of embryo donation. Abandoned embryos may not be adopted unless consent of the IVF patients is obtained.

Embryo adoptions currently occurring in the USA follow this legal form and also incorporate some legal and social elements of adoption. For example, Snowflakes Embryo Adoptions, a wing of the California-based Nightlight Christian Adoptions agency, matches genetic parents of embryos with adoptive parents who meet the genetic parents' criteria, as in a traditional agency open adoption. The Snowflakes model comports with relevant California embryo regulations and parentage law; at the same time, it ties in elements of traditional adoption, making the process feel more like an adoption than a transfer of property.

Snowflakes donors and recipients are screened through applications and interviews to ensure their understanding of the process, so Snowflakes begins with a pool of committed and willing donors and recipients who are much less likely to change their minds than the embryo owners in lower court cases such as *AZ v. BZ* (Nightlight Christian Adoptions, 2007). As in traditional private agency adoptions, the Snowflakes program then recommends counseling and requires a homestudy before it will place embryos into a family (Stoddart, personal communication, 2003). After these are completed, the parties sign a contract which purports to transfer rights from the genetic to the adoptive parents (Stoddart, 2003). Strictly speaking, the legal effect of this contract is a transfer from one couple to another of ownership and control of the embryos, but not a transfer of parentage, because the law does not recognize parental rights in embryos. Under California law, the birth mother, not the gestational mother, is the legal mother, and so the adoptive couple's parental rights to the embryo actually go into effect at birth. In short, through counseling, and the openness of the entire process, the Snowflakes program gives donating parents at least the protections given to birth mothers in traditional adoptions.

The National Embryo Donation Center (NEDC) in Knoxville, Tennessee, directed by Jeffrey Keenan, M.D., conducts embryo adoptions by similar legal processes, although the NEDC offers both open and closed adoptions. Please see Keenan's chapter in this book for a complete description of his program. Agreement and relinquishment contracts – rather than adoption laws – govern the process. While Tennessee statutory law is silent on the question of frozen embryos,<sup>7</sup> the

---

<sup>7</sup> Somewhat relatedly, Tennessee Code § 36-1-102-48 (2001) provides that no surrender is necessary to terminate any parental rights of a surrogate who carried a child to term for biological parents and no adoption of the child by the biological parent(s) is necessary.

Tennessee Supreme Court in *Davis v. Davis* (1992, 588), discussed above, has already held that embryos are mere special property and has shown its willingness to uphold the desire of a party wishing not to donate embryos against the other party who wishes to donate.

The Snowflakes and NEDC programs are successfully carrying out embryo adoptions within the current consent-based framework governing embryo disposition. In legal fact, the donation of the embryo is a consented-to transfer of special property rather than a legally recognized *adoption*; the legal parentage of the recipient parents is presumed once the recipient mother gives birth to the adopted embryo. For this reason, these arrangements rely on the continuing consent of embryo donors throughout the pregnancy, since, as discussed above, courts may be willing to invalidate embryo owners' past agreements to donate if they presently decide against procreating. The Snowflakes and NEDC embryo adoption arrangements would be far more secure if state law would explicitly establish the donees' rights to the embryos from the moment they are transferred to the donee's womb.

A final related matter I will consider is that of terminology – “adoption” or “donation”? An embryo adoption bears more emotional and social resemblance to a traditional adoption than it does to other types of ARTs. For example, in the case of frozen embryos, the intention of the couple to whom the embryos “belong” was to give birth to and parent their own children, and many of them still view their frozen embryos at least as virtual children (de Lacey, 2005, pp. 1661–1669). This is a far cry from mere gamete donation. On the other side, an adoptive couple is accepting another couple's embryos with the hope of having children who they will welcome into their family and parent. Their experience more closely resembles that of an adoptive parent than that of, for example, a temporary surrogate. Adoption therefore seems a more appropriate paradigm for this practice (Cf. Brakman, 2007).

However, from a purely legal perspective, using the term “adoption” to discuss the process of the transfer of embryos between couples under current US law is inaccurate and, as Charles Kindregan and Maureen McBrien suggest, possibly misleading (Kindregan & McBrien, 2004, p. 169). Homestudies, background checks, interviews, and other social elements of a traditional adoption serve to provide an adoption-like context but have no legal effect. In fact, they may convince recipient couples that they are legally adopting an embryo when in fact, as discussed above, their parentage is not certain until at least the moment at which the child is born and parental rights of the birth couple are presumed.

Furthermore, adoption law cannot apply to embryo donation because many state statutes specifically invalidate biological parents' consent to adoption that is given prior to childbirth (Kindregan & McBrien, 2004, p. 169). If adoption law governed embryo donation, these state laws would explicitly provide the donating couple the right to assert parentage throughout the pregnancy and even after birth (Majumder, 2005, 12(3)). Legally, embryo donation in the USA consists in: (1) the embryo donor couple consenting to have its embryos transferred to another couple; (2) the other couple consenting to receive the embryos and have the embryos implanted into the woman's womb; and (3) the embryos being born so that the legal parentage of the birth mother and her husband are presumed. “Donation” most accurately describes the current legal process.

### 3 United Kingdom

The UK is permissive in the disposition options it permits and decisive in its regulation of embryo parentage. Please refer to Table 2, “International Law Relating to Embryo Adoption.” UK courts have arrived at outcomes similar to those in the USA but based on different reasoning. Statutory law allows the absolute revocation of consent to embryo donation up through the time of transfer to the womb, so the party wishing not to procreate usually prevails because his refusal of consent prior to implantation serves as a veto (Human Fertilisation and Embryology Act (HFEA), 1990, Schedule 3). However, once the embryo is transferred, parental rights are settled (HFEA, 1990, Schedule 27(1)).

#### 3.1 UK Statutory Law

The Human Fertilisation and Embryology Act of 1990 (HFEA), the British statute governing fertility treatment and embryo disposition, treats embryo research and donation as given and regulates them according to the principles of good tissue screening practice and informed consent of all parties. The HFEA established the Human Fertilisation and Embryology Authority in the UK, a government advisory body on ART-related topics that executes the HFEA.

The HFEA allows embryo experimentation up to 14 days after fertilization (HFEA, 1990, Schedule 3), and it sets up a 5-year statutory time limit on the freezing of embryos after which the embryos will be “allowed to perish” (HFEA, 1990, Schedule 14). This provision already has been applied to some frozen embryos: On August 1, 1996, 3,300 embryos were removed from storage in the UK to die because they had exceeded their 5-year preservation limit (Demartis, 1998, pp. 101–103). Two hundred Italian women, including two nuns, stepped forward to rescue these embryos by having them transferred to their wombs with the intent of offering any born children for adoption, making national news with their public statement against embryo destruction (Demartis, 1998, pp. 101–103). Nevertheless, the embryos were ultimately destroyed.

HFEA Schedule 3 requires consent from both gamete donors at every step of the IVF treatment, embryo storage, and embryo transfer. Consent can be revoked at any stage up to embryo transfer, but parental rights are settled at the time of embryo transfer. Under the HFEA, the woman who is carrying an embryo – whether her genetic offspring or not – or who carried an embryo to birth is treated as the legal mother of the embryo (HFEA, 1990, Schedule 27(1)). The legal father is the man married to the “mother” at the time the embryo is transferred to her womb, unless it is shown that this man did not consent to the transfer of the embryo into the woman’s uterus (HFEA, 1990, Schedule 28). US states would do well to model their embryo parentage statutes after the HFEA, establishing the parental rights of the gestational mother from the time she receives the embryo into her womb rather than leaving parentage of the embryo ambiguous from the time of embryo transfer to birth.

**Table 2** International laws relating to embryo adoption

	Embryo disposition	Prerequisites to embryo donation	Parentage	Other
United Kingdom (HFEA)	As long as embryo owners consent, research, donation, storing and discarding are permitted; 5-year time-limit on embryo cryopreservation HFEA § 14, Schedule 3	Embryo owners must consent at each step of the process up through transfer to the womb HFEA Sched. 3	The woman who is carrying an embryo – whether her genetic offspring or not – or who carried an embryo to birth is treated as the legal mother of the embryo; the legal father of the child of a donated embryo is the man married to the “mother” at the time the embryo is transferred to her womb, unless he did not consent to embryo transfer (HFEA § 27, 28)	Donor disclosure: people conceived by donors who registered with the HFEA after April 1, 2005 now can find out who their donor is once they reach age 18. One person’s gametes or embryos may be used in up to 10 live births, except in special circumstances
Australia (Research Involving Human Embryos Act)	Consent required for disposition; Cryopreservation time limits vary by state, 5 or 10 years; state embryo registry to publicize embryos available for donation to other infertile couples	Donor consent		Donor disclosure in Victoria; donor non-identifying information available to offspring in other states
Italy (Law 40: Medically Assisted Reproduction Law)	Prohibits embryo research, cryopreservation, gamete donation, and surrogacy; no more than three eggs can be fertilized at any one time and all eggs that are fertilized must be implanted together into the woman’s uterus, so no embryo surplus in future		Limits IVF to “stable heterosexual couples who live together and are of childbearing age” and who have been proven “clinically infertile”, excluding single women and same-sex couples, and prohibits gamete donation, so no ambiguity as to parentage	Pre-implantation genetic diagnosis and prenatal screening for genetic disorders are prohibited

Germany (Embryo Protection Act) Embryos to be created for IVF only and transferred only into the womb of the woman who produced the egg for fertilization; creating embryos for research or other purposes is prohibited; illegal to create more embryos than will be transferred into the egg donor's womb in a given cycle, and the absolute limit is three embryos transferred per cycle. Prohibits disposing of, or handing over or acquiring or using embryo for a purpose not serving embryos preservation

IVF embryos may be transferred only into the womb of the woman who produced the egg, so no ambiguity as to parentage

---



The HFEA limits the number of donations any individual may make to alleviate concerns about consanguinity of spouses. One person's gametes or embryos may be used in up to ten live births, except in special circumstances such as where a mother of a child already born wants to have another child who is genetically related to the sibling (Human Fertilisation and Embryology Authority, 2007, 7). Gamete and embryo donors can set their own maximum number lower if they wish (Human Fertilisation and Embryology Authority, 2007, 7).

The Human Fertilisation and Embryology Authority has focused in recent years on supporting donor-conceived people by maintaining a register with identifying information on all registered donors. Prior to April 2005, people over age 18 could apply to the Human Fertilisation and Embryology Authority to find out if they were conceived using donor sperm and could ask whether they were related to someone they wanted to marry, but they could not know the identity of their donor (Human Fertilisation and Embryology Authority, 2007, 3). However, people conceived by donors who registered with the Human Fertilisation and Embryology Authority after April 1, 2005 now can find out who their donor is once they reach age 18 (Human Fertilisation and Embryology Authority, 2007, 3). While this lack of anonymity may discourage IVF patients from choosing embryo donation, after similar identifying information was made available in Australia and Sweden, the number of donors temporarily dropped but then returned to previous levels (Elster, 2007).

### 3.2 *British Courts Applying the HFEA*

British courts operating under the HFEA have reached outcomes similar to state courts in the USA when weighing rights of parties in embryo disposition cases. British courts have found that present desire determines the disposition of embryos regardless of past agreements or consent given, especially when one party revokes consent based on a desire not to procreate.

In *Evans v. Johnston*, Natallie Evans and her partner Howard Johnston had undergone IVF together before Natallie was treated for ovarian cancer (Rozenberg & Womack, 2006). When the couple later split up, Evans wished to have the embryos transferred to her womb, since they offered her last chance of having genetically related offspring. However, Johnston withdrew his consent for the embryos to be used, arguing that he did not want the financial or emotional burden of being a father to a child he would not raise himself (Rozenberg & Womack, 2006). The British court found in his favor because the HFEA allowed him to revoke consent at any stage prior to implantation, and it ordered destruction of the embryos (Rozenberg & Womack, 2006). The case went to the European Court of Human Rights at Strasbourg (Rozenberg & Womack, 2006). The European judges found that, in the absence of an international consensus on the use of fertility treatment, Britain was owed wide discretion, or a "margin of appreciation"; consequently, the British decision was affirmed (Rozenberg & Womack, 2006).

Mr. Johnston prevailed because, under HFEA Schedule 3, consent can be revoked at any stage up to embryo transfer. Only after the embryo is transferred with the consent of both parties do those parties become the legal parents (HFEA,

1990, Schedule 27–28). While the HFEA framework makes an agreement for embryo adoption tenuous until the embryo is actually transferred, establishing parentage at the time of embryo transfer rather than birth protects the embryo adoptive parents more adequately than parentage statutes in many US states. And a national embryo regulatory scheme like the HFEA prevents confusion and inconsistency that exist where, as in the US, embryo disposition is regulated on a state level.

## 4 Australia

Law regulating embryo use and disposition in Australia closely resembles that in the UK, revolving around consent of the donors, permitting varied forms of embryo research, and encouraging donor disclosure. Please refer to Table 2, “International Law Relating to Embryo Adoption.” Australia’s Research Involving Human Embryos Act of 2002 prohibits fertilizing human eggs for any purposes other than for use in IVF treatments, except that embryos can be created for research involving fertilization of eggs up to, but not including, the first cell division. The intent of the law is that these earliest embryos will be used for research, training and improvements in clinical practice of ARTs. Use of IVF surplus embryos for research is permitted, under license, up through 14 days of ex utero embryo development.

By the end of 2003, there were about 105,000 frozen embryos in storage in Australia (Australian Institute of Health and Welfare National Perinatal Statistics Unit, 2003, Table 9). Cryopreservation time limits vary by state in Australia – in Victoria, the limit is 5 years, whereas in South Australia, the Northern Territory and other states the limit is 10 years. Some embryos that exceed their storage time limit are used for research under license, but most are discarded. In the Australian state of Victoria at least 6,642 surplus embryos had been discarded as of the end of 2005 (ZENIT, 2005).

In response to this surplus of frozen embryos, the Lockhart Review, a six-member committee appointed by the Australian government to review the Research Involving Human Embryos Act of 2002, proposed setting up a national embryo register so that research facilities can know where to locate surplus embryos available for research (Lockhart Legislation Review Committee, 2005, § 17:14). The register also is intended to help facilitate donation to other infertile people. Only about 10% of Australian couples with surplus embryos choose to donate them (Kovacs et al., 2003, p. 127).

Rules on disclosure of donor/donee information vary from state to state in Australia, although the state of Victoria has one of the most progressive donor disclosure laws internationally. In 1998, Victoria enacted the Infertility Treatment Act which allows the state Infertility Authority to put interested donors in contact with their offspring (Donor Conception Support Group, 2007). In Victoria, when a donor submits an initial request, the state will send a letter to the adult child to inquire about his or her willingness to meet the donor, even

if the child's parents have not informed the child that he or she was donor-conceived (Donor Conception Support Group, 2007). This legislation replaced law which established a registry that maintained donor anonymity but allowed adult offspring to learn non-identifying information about donors such as blood type (Donor Conception Support Group, 2007). Disclosure laws in other states, if they exist at all, follow this more traditional line (Donor Conception Support Group, 2007). While liberal disclosure regulations caused an initial drop in the number of donors, donations have returned to their previous level (Elster, 2007).

As in the USA and the UK, embryo donation in Australia is one among several state-sanctioned disposition options for embryos. Some surplus frozen embryos in Australia are used for research but most are discarded. In Australia, those considering embryo donation will have access to a national registry of donated embryos and state-assisted contact between donors and offspring.

## 5 Italy

### 5.1 *Statutory Law*

A generation ago, Italy was known as the Wild West of high-tech reproduction. There, the first human embryos were created in vitro, a 60+ year-old menopausal woman gave birth through ARTs, attempts at human cloning proliferated, nuns offered to rescue embryos slated for destruction under England's 5-year storage law, and one doctor claimed to have brought an embryo to 40 days of development in a lab and even heard a heartbeat (Henig, 2004). Italy epitomized the hands-off approach to embryo regulation.

But its recently passed embryo regulatory statute, the Medically Assisted Reproduction Law (2004: Law 40), makes Italy among the most restrictive nations in Europe when it comes to treatment of the embryo. Please refer to Table 2, "International Law Relating to Embryo Adoption." Italy's law prohibits embryo research, cryopreservation, gamete donation, and surrogacy (Turone, 2004a, p. 9). It also limits doctors to treating "stable heterosexual couples who live together and are of childbearing age" and who have been proven "clinically infertile," thereby excluding single women and same-sex couples (Turone, 2004a, p. 9). Pre-implantation genetic diagnosis and prenatal screening for genetic disorders are prohibited (Turone, 2004a, p. 9). No more than three eggs can be fertilized at any one time and all eggs that are fertilized must be implanted together into the woman's uterus (Turone, 2004a, p. 9). Doctors in violation of the law face heavy fines and imprisonment (Turone, 2004a, p. 9). Some legal experts have already questioned the law, saying it conflicts with Italy's constitution, which explicitly protects the health of its citizens (Turone, 2004a, p. 9). Also, abortion is permitted in Italy, so Law 40 creates incongruity in treatment of the unborn.

In June 2005, a year after passage, opponents of the law collected almost four million signatures of protest and submitted them to Italy's constitutional court, which reviews government legislation. While refusing to overturn the law, the court

permitted citizens to vote in a referendum – “Yes” to revise the law or “No” to keep the law as is. Only 25.9% of the electorate turned out to vote on the referendum on June 12 and 13, 2005, missing a required 50% quorum, so the law remained unrevised (Turone, 2005, p. 1405). Approximately 80% of those voting were in favor of revising the controversial law, but the Catholic bishops’ call to support the law by abstention from voting kept many Italians in favor of the law from going to the polls (Turone, 2005, p. 1405).

Many hundreds of couples, fearful of having babies with genetic illnesses when embryos diagnosed with genetic disorders are mandatorily implanted, have started to go abroad (Turone, 2004b, p. 1334). Specialists and researchers in the field have done the same (Turone, 2004b, p. 1334). The Italian law applies to actions done on Italian soil and penalizes those who publicize foreign locations where ARTs are available; however, it does not penalize Italians who undergo banned ARTs outside of Italy (Robertson, 2004, p. 1695). Italian law also recognizes children born elsewhere through ARTs as children of the infertile couple and not of the gamete donor (Robertson, 2004, p. 1695).

The law prohibits the destruction of IVF surplus embryos, yet 24,276 embryos were in frozen storage in Italy’s 323 ART centers at the time the law was passed (Fineschi et al., 2005, p. 536). In November 2005, Italy’s National Bioethics Committee (NBC) came out in favor of permitting married couples, de facto couples and single persons to adopt these frozen embryos (ZENIT, 2005).<sup>8</sup> By the time of the NBC recommendation, around 250 couples who owned frozen embryos had signed a declaration formally abandoning them, thus opening up the way for their eventual adoption (ZENIT, 2005). However, other couples have decided to bring their frozen embryos home in the wake of the new Italian law, perhaps, according to one doctor, fearing that their embryos might be seized by the state (Turone, 2004a, p. 9).

## ***5.2 Italian Courts Applying the Medically Assisted Reproduction Law***

In keeping with the dictates of the Medically Assisted Reproduction Law, in June 2005, an Italian judge ordered a sterile couple to transfer to a woman’s womb all her embryos created through IVF, despite the fact that both parents carried the recessive gene for  $\beta$  thalassaemia, wanted preimplantation genetic diagnosis, and would not keep a child born with the condition (Turone, 2004b, p. 1334).

The definitiveness and clarity of Italy’s law coupled with its respect for the embryo all but solve the problem of embryo disposition that vexes courts in embryo-as-property legal systems such as the USA. The embryo must be treated

---

<sup>8</sup>That Committee has a history of favoring embryo adoption. In its comment on the Council of Europe’s preliminary protocol regarding embryo research, the NBC urged the Council of Europe to allow embryo adoption as an alternative to discarding frozen embryos where the couple disagrees as to their disposition (Italian National Bioethics Committee, 2000).

in a way that aims to preserve its life, which means adoptive implantation only. An IVF mother like the one in this case cannot change her mind once she has procreated through IVF and has embryos waiting to be implanted in her womb. However, this outcome is unlikely to be replicated in nations where privacy rights are entrenched and the rights of the unborn are largely unacknowledged. For example, in the USA, the Supreme Court has declared that a woman's bodily integrity gives her a right to destroy even a viable, third trimester fetus already inside her womb. Judicially mandated transfer of an IVF embryo into a woman's womb is impossible to imagine under current US laws.

Eventually, embryo adoption may cease to occur in Italy altogether. The supply of adoptable embryos will drop drastically, since its laws curtail further creation of surplus IVF embryos and favor adoption of those already in existence.

## 6 Germany

Germany's strict protection of embryos flows out of its constitutional guarantee of the right to life and the recognition of the unborn as constitutional persons. The German Basic Law expressly protects the human dignity (Art. I) and life (Art. II) of all persons, and the Federal Constitutional Court has definitively interpreted this provision to apply to unborn human beings as well as humans already born (*Abortion Case I*, 1975, § 1). Like the US Bill of Rights, the German Constitution protects the individual *against* the state's interference with his fundamental rights, but the German constitutional provisions also have a positive dimension, imposing affirmative duties on the state to protect one citizen against another (Voss, 2002, p. 229). This positive guarantee of the right to life under the German Basic Law has resulted in state protection of the unborn. In the aftermath of the Holocaust and the Nuremberg Code, Germany has taken special care in legislating on topics related to eugenics and the protection of the vulnerable. Germany's Embryo Protection Act of 1990 reiterates principles contained in the German constitution, abortion cases, and Penal Law by essentially granting embryos the same legal right not to be destroyed that it grants to all citizens.

By way of background on protection of the unborn, in its *Abortion Case I* (1975, § 1) the German Constitutional Court notably diverged from *Roe v. Wade*. It defined the embryo as an independent human being who stands under the protection of the constitution. The Court acknowledged the woman's right to the free development of her personality (the German equivalent of the US right to decide when to procreate), but stated that the constitutional order, the moral law, and the rights of others such as the unborn limit this right. The court ultimately held that a decision oriented to Article 1 of the Basic Law, the provision which guarantees human dignity, must favor the life of the unborn child over the right of the pregnant woman to self-determination. It reasoned that destroying an unborn life more offends human dignity than does affecting in one among many possible ways the self-determination of a pregnant woman. The German Penal Code § 218(a)(1) now provides that abortion is always

unlawful but is punishable only under certain circumstances, and the Code requires that pregnant women considering abortions undergo state-provided counseling to encourage them to continue their pregnancies.<sup>9</sup>

Germany's ART regulations are a part of its criminal law, and violations are punishable by up to 3 years imprisonment. Please refer to Table 2, "International Law Relating to Embryo Adoption." Germany's Embryo Protection Act (1990, § 1) allows embryos to be created for IVF use only and transferred *only* into the womb of the woman who produced the egg for fertilization. It is illegal to create more embryos than will be transferred into the egg donor's womb in a given cycle, and the absolute limit is three embryos created and transferred per cycle. Creating embryos for research and using embryos for any purpose other than to achieve pregnancy are both prohibited.

Regarding currently frozen embryos, the Embryo Protection Act § 2(1) states that anyone who disposes of, hands over or acquires or uses for a purpose not serving its preservation, a human embryo produced outside the body, or removed from a woman before the completion of implantation in the uterus, will be punished. Temporary cryopreservation and embryo adoption are the only uses which serve the embryo's preservation. As in Italy, since no more surplus embryos are being created, embryo adoptions are likely to be widespread in Germany only until all frozen embryos have been given a chance at life.

German legislation flows logically out of its recent abortion cases which acknowledge the humanity of the unborn. Recognition of all unborn children as persons makes for a coherent legal framework that applies equally to one-cell embryos, first trimester fetuses, and newborn babies at the moment of birth.

As the tables and this discussion indicate, international consensus on the status and acceptable use of embryos is even more widely divergent than within the USA. However, unlike the USA, other nations have regulated on a national level.<sup>10</sup> These nations choose either property or personal status for the embryo and out of that

---

<sup>9</sup>Penal Code § 218(a)(1) is consistent with *Abortion Case I* (German Constitutional Court, 1975, 1). Penal Code § 218(a)(1) provides that "Acts, the effects of which occur before the conclusion of the nesting of the fertilized egg in the uterus [defined by *Abortion Case I* as 14 days], shall not qualify as 'termination of pregnancy' within the meaning of this law." However, this 14 day definition only determines the applicability of abortion laws to the early embryo; it has not precluded the German legislature from passing laws specifically to protect *extracorporeal* embryos from research or discarding.

<sup>10</sup>In this chapter, I selected the UK, Australia, Italy and Germany because these four nations have relatively well-developed embryo regulatory law. The UK and Australia clearly embody the property approach to embryos, whereas German and Italian law treat the embryos as persons. However, other nations are grappling with the question of the status of *extracorporeal* embryos and how to regulate their disposition. For example, in Ireland, Article 40.3.3 of the Irish Constitution acknowledges the right to life of the unborn "with due regard to the equal right to life of the mother." However, on November 15, 2006, Ireland's High Court declared that frozen embryos are not "unborn" within the meaning of the Constitution and denied a woman the right to implant her own embryos in her womb against the will of her estranged husband. The High Court stated that the status of the IVF embryo was a matter for the Irish Parliament to decide (Cassidy, 2006).

determination flow their regulations. Embryo-as-property regulations end up being similar from one nation to the next, as do embryo-as-person regulations.

## 7 Conclusion

Embryo adoption comes in two forms: (1) embryo transfers to a genetically unrelated recipient under embryo-as-property law, where both genetic parents must presently consent to the donation, and where the adoptive parents' rights sometimes are not perfected until the moment of birth, and (2) transfers to a genetically unrelated woman in embryo-as-person legal systems, where surplus embryos may not be created, where all embryos created via IVF must immediately be transferred to a maternal womb, and where already-frozen embryos can be used for placement with the genetic parents or for adoption only. Regulations in embryo-as-person nations such as Italy and Germany – which flow from a fundamental recognition of the humanity of the unborn – are remarkably coherent and simple to apply. On the other hand, when the embryo is treated as property, interests of the embryo are not taken into account; rights over the embryo often remain in flux until a court makes a policy-based determination in favor of one party or another, as shown in the US cases of *Kass v. Kass*, *Davis v. Davis*, and *AZ v. BZ*. If the practice continues in embryo-as-property legal systems such as the USA, it makes sense for states to create embryo donation legislation establishing the rights of embryo donees so they are not at legal risk during gestation. Although the legal processes surrounding embryo adoption differ in embryo-as-person and embryo-as-property systems, under both types of systems, embryo adoption is a lawful means of giving the hundreds of thousands of currently frozen embryos a chance at life.

## References

- Australian Institute of Health and Welfare National Perinatal Statistics Unit, 'Assisted reproduction technology in Australia and New Zealand 2003', Assisted Reproductive Technology Series, at Table 9.
- Australian Parliament (2002). 'Research Involving Human Embryos Act: No.145.'
- Brakman, S.V. (2007). 'Paradigms, practices and politics: Ethics and the language of human embryo transfer/donation/rescue/adoption,' in M.J. Cherry & A.S. Iltis (Eds.), *Pluralistic Casuistry: Moral Arguments, Economic Realities, and Political Theory, Essays in Honor of Baruch A. Brody* (191–210). Dordrecht, The Netherlands: Springer.
- California Health and Safety Code § 125320 (2003).
- California Penal Code § 367 g (1996).
- Cassidy, L. (Nov. 15, 2006). 'Court says frozen embryos "not unborn",' *The Irish Times*.
- Constitution of Ireland (1937). Article 40.3.3.
- Crockin, S.L. (Dec. 4, 2005). 'How do you "Adopt" a frozen embryo?,' *Boston Globe, Opinion*.
- de Lacey, S. (2005). 'Parent identity and "virtual" children: Why patients discard rather than donate unused embryos,' *Human Reproduction*, 20(6), 1661–1669 quoted in Brakman, S.V. (forthcoming). 'Paradigms, practices and politics: Ethics and the language of human embryo

- transfer/donation/rescue/adoption,' in M.J. Cherry & A.S. Iltis (Eds.), *Pluralistic Casuistry: Moral Arguments, Economic Realities, and Political Theory, Essays in Honor of Baruch A. Brody*. Dordrecht, The Netherlands: Springer.
- Demartis, F. (1998). 'Mass pre-embryo adoption,' *Cambridge Quarterly of Healthcare Ethics*, 7, 101–103.
- Donor Conception Support Group (2007) *Australian Legislation on Donor Conception* [Online]. Available: <http://www.members.optushome.com.au/dcsg/legislation/legislation.html>.
- Elster, N.R. (2007) *All or Nothing? The International Debate over Disclosure to Donor Offspring* [Online]. Available: [http://www.thehumanfuture.org/commentaries/assisted\\_reproductive\\_technology/art\\_commentary\\_elster01.html](http://www.thehumanfuture.org/commentaries/assisted_reproductive_technology/art_commentary_elster01.html).
- Fineschi, V., Neri, M. & T. Urillazzi, E. (2005) 'The new Italian Law on assisted reproductive technology,' *Journal of Medical Ethics*, 31, 536–539.
- Food and Drug Administration (2005). 'Human cells, tissues, and cellular and tissue-based products,' *Code of Federal Regulations*, 21, Part 1271.
- German Constitutional Court (1975). 'Abortion Case I,' *Bundesverfassungsgerichtsentscheidung (BVerfGE)*, 39, 1.
- German Constitutional Court (1993). 'Abortion Case II,' *BVerfGE*, 88, 203.
- 'Adoption' (2003). *American Jurisprudence, Second Series*, 2, § 82.
- German Parliament (1990). 'German Embryo Protection Act.'
- German Penal Code § 218(a)(1).
- Henig, R.M. (2004) *On High-tech Reproduction, Italy Will Practice Abstinence* [Online]. Available: <http://query.nytimes.com/gst/fullpage.html?sec=health&res=9C01EFDE173FF931A35750C0A9629C8B63&fta=y>.
- Human Embryology and Fertilisation Authority (HFEA) (2007). *Fact Sheet on Sperm, Egg & Embryo Donation* [Online]. Available: <http://www.hfea.gov.uk/cps/rde/xchg/SID-3F57D79B-A9284EC7/hfea/hs.xsl/1140.html>.
- Italian National Bioethics Committee (2000). 'Protection of the Human Embryo and Fetus: The Italian National Bioethics Committee Statement Concerning the Preliminary Draft Protocol of the Bioethics Committee of the Council of Europe.'
- Italian Parliament (2004). 'Medically Assisted Reproduction Law: Law 40/2004.'
- Kindregan, C. & McBrien, M. (2004). 'Embryo donation: Unresolved legal issues in the transfer of surplus cryopreserved embryos,' *Villanova Law Review*, 49, 169–206.
- Kovacs, G.T., Breheny, S.A., & Dear, M.J. (2003). 'Embryo donation at an Australian University in vitro fertilisation clinic: Issues and outcomes,' *Medical Journal of Australia*, 178(3), 127–129.
- Krentel, J.B. (1985). '“Ownership” of the fertilized oovum in vitro: A hypothetical case in Louisiana,' *Louisiana Business Journal*, 32, 284–288.
- Lockhart Legislation Review Committee (Dec. 19, 2005). 'Committee Report,' § 17:14.
- Louisiana Revised Statutes §§ 9:122–133 (1986).
- Majumder, M.A. (Fall 2005). 'Dialogue: The politics of embryo transfer,' *The Lahey Clinic Medical Ethics Journal*, 12(3), 10–11.
- Massachusetts Supreme Court (2000). 'AZ v. BZ,' *Massachusetts Reports*, 431, 151–162.
- National Conference of Commissioners on Uniform State Laws (2002). 'Uniform Parentage Act.'
- National Conference of State Legislatures (2007) *Gamete and Embryo Disposition* [Online]. Available: <http://www.ncsl.org/programs/health/embryodisposition.htm>.
- New Jersey Supreme Court (2000). 'J.B. v. M.B.,' *Atlantic Reporter Second Ed.*, 751, 613–620.
- New York Court of Appeals (1998). 'Kass v. Kass,' *Northeastern Reporter*, 696, 174–182.
- Nightlight Christian Adoptions (2007) *Snowflakes Embryo Adoptions Fact Sheet* [Online]. Available: <http://www.nightlight.org/Snowflakesfacts.pdf>.
- Robertson, J.A. (1990). 'In the beginning: The legal status of early embryos,' *Virginia Law Review*, 76, 437–517.
- Robertson, J.A. (2004) 'Protecting embryos and burdening women: Assisted reproduction in Italy,' *Human Reproduction*, 19, 1693–96.



- Rozenberg, J. & Womack, S. (Aug. 13, 2006) *Don't Stop Me Becoming a Mother* [Online]. Available: <http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2006/03/08/nivf08.xml&sSheet=/news/2006/03/08/ixhome.html>.
- Telephone interview by author with Ron Stoddart, Director and Attorney, Snowflakes Embryo Adoptions (Mar. 20, 2003).
- Tennessee Code § 36-1-102-48 (2001).
- Tennessee Supreme Court (1992). 'Davis v. Davis', *Southwestern Reporter Second Ed.*, 842, 588–605.
- Turone, F. (2004a). 'Italy to pass new law on assisted reproduction,' *British Medical Journal*, 328, 9.
- Turone, F. (2004b). 'New law forces Italian couple with genetic disease to implant all their IVF embryos,' *British Medical Journal*, 328, 1334.
- Turone, F. (2005). 'Italians fail to overturn restrictive reproduction law,' *British Medical Journal*, 330, 1405.
- United Kingdom Human Fertilisation and Embryology Authority (1990). 'Human Fertilisation and Embryology Act.'
- US District Court for the Southern District of New York (1978). 'Del Zio v. Columbia Presbyterian Hospital,' No. 74 Civ. 3588.
- US District Court for the Eastern District of Virginia (1989). 'York v. Jones,' *Federal Supplement*, 717, 421–429.
- US Supreme Court (1965). 'Griswold v. Connecticut,' *United States Reports*, 381, 479–532.
- US Supreme Court (1972). 'Eisenstadt v. Baird,' *United States Reports*, 405, 438–473.
- US Supreme Court (1973). 'Doe v. Bolton,' *United States Reports*, 410, 179–201.
- US Supreme Court (1973). 'Roe v. Wade,' *United States Reports*, 410, 113–179.
- US Supreme Court (1992). 'Planned Parenthood v. Casey,' *United States Reports*, 505, 833–990.
- Voss, A. S. (2002). 'The right to privacy & assisted reproductive technologies: A comparative study of the law of Germany and the U.S,' *New York Law School Journal of International and Comparative Law*, 21, 229–305.
- ZENIT (2005) *Future of Frozen Embryos* [Online]. Available: <http://www.yourcatholicvoice.org/insight.php?article=2790>.

# Artificial Wombs and Embryo Adoption

Christopher Kaczor

## 1 Introduction

In this essay, I will offer a tentative assessment of the ethics of both embryo adoption (Heterologous Embryo Transfer-HET) and the use of an artificial uterus on the basis of currently articulated Catholic teaching. While embryo adoption is already a present reality, a discussion of an artificial uterus may seem utterly unrelated to any real possibility, akin to an ethical evaluation of using a Star Trek transporter. However, such a judgment must also reckon with contemporary developments. In 1973, viability was considered to be given at around 28 weeks' gestation and neonates under 1,000 g were allowed to die, but by the year 2000 premature infants of only 18 weeks and 470 g are reported to have survived (Singer & Wells, 1984, p.131; Oderberg, 2000, p. 5). Since then, efforts by scientists to lower the threshold of viability have continued, in particular at Temple University,<sup>1</sup> Cornell University,<sup>2</sup> and Juntendo

---

<sup>1</sup> At Temple University, Dr. Thomas Schaffer, Professor of Physiology and Pediatrics, has developed a synthetic amniotic fluid of oxygen rich perflubron, an inert liquid that can carry more oxygen than blood. (See C.L. Leach et al. (1996). 'Partial liquid ventilation with perflubron in premature infants with severe respiratory distress syndrome,' *New England Journal of Medicine*, 335, 761–767; J.E. Salo (1997). 'Perflubron in infants with severe respiratory distress syndrome,' *New England Journal of Medicine*, 336, 660. Most premature infants die because their lungs cannot get sufficient oxygen, but Professor Schaffer's synthetic amniotic fluid could overcome this obstacle. He has tested the liquid on premature lamb fetuses who were successfully sustained using the artificial amniotic fluid after being transferred from their mothers' wombs. Lack of funding has thus far prevented tests on infants born prematurely (See, S. Zimmerman (2003b). 'The fetal position: The real threat to *Roe v. Wade*,' in *The New Republic* [Online], August 18, 2003. Available: <https://ssl.nrc.com/p/docsub.mhtml?i=20030818&s=zimmerman081803>).

<sup>2</sup> Dr. Hung Ching Liu, Professor of Reproductive Medicine in Clinical Obstetrics and Gynecology and Professor of Clinical Reproductive Medicine at Cornell University, has "taken steps toward developing an artificial womb by removing cells from the lining of a woman's womb and then, using hormones, growing layers of these cells on a model of a uterus. The model eventually

University in Japan.<sup>3</sup> Given the technological progress that has already taken place in pushing back the limits of gestation, and given the teams of researchers working to move the threshold back even further, the advent of artificial wombs seems less science fiction and more science future.

Of special importance in assessing the moral permissibility of the use of the artificial uterus as well as embryo adoption from the vantage point of Catholic ethics, particularly the teaching of the magisterium, will be the *Donum Vitae* (Instruction on Respect for Human Life), as well as Pope John Paul II's encyclical *Evangelium Vitae* (The Gospel of Life). These documents present the Catholic Church's teaching on certain contemporary issues in the creating of human life including in vitro fertilization, surrogate motherhood, and embryo experimentation.

Although the official teaching office of the Catholic Church has never explicitly addressed the question of the moral permissibility of artificial wombs or embryo adoption, Catholic teaching does provide principles that could be applied to both. Indeed, although these principles might at first glance seem to imply the moral impermissibility of both practices, I believe nothing proposed by the magisterium thus far, would necessarily lead to a comprehensive condemnation of either artificial wombs or embryo adoption in all circumstances. Indeed, I believe fundamental principles of Catholic moral thought as well as accepted practice lead to the opposite conclusion.

However, in order to argue for this conclusion, several important arguments against artificial wombs and embryo adoption must first be acknowledged: (1) the IVF objection, (2) the embryo transfer objection, (3) the integrative parenthood objection, (4) the marital unity objection, (5) the surrogate motherhood objection, and finally, (6) the wrongful experimentation objection. These objections suggest

---

dissolves; leaving a new artificial womb that continues to thrive. What's more, Liu's team found that, within days of being placed in the new womb, embryos will attach themselves to its walls and begin to grow. ... [R]esearchers do not yet know how long after the beginning stages of gestation this artificial womb could be viable" (Zimmerman, 2003b). See also, Peter Moyer. (2001). 'Engineered endometrial tissue may provide new infertility therapies,' in *Reuters Health Medical News*, February 24, 2001. If Dr. Liu's research is successful, these artificial wombs could be implanted in women whose uteruses have been damaged or removed due to pathology, paving the way to reproductive success for many infertile women.

<sup>3</sup>Dr. Yoshinori Kuwabara, Professor of Obstetrics and Gynecology at Juntendo University in Japan, has perhaps gone the furthest in developing external means of gestation. His team of researchers has constructed a clear acrylic tank, about the size of a bread basket, filled with what functions as amniotic fluid, and stabilized at the appropriate body temperature. In this tank, they kept goat fetuses alive more than a week, attached through their umbilical cords to machines that function as placentas. Dr. Kuwabara has predicted that the use of artificial wombs for human beings could be begun within the next 5 years. See, S. Zimmerman (2003a). 'Ectogenesis: Development of artificial wombs,' in the *San Francisco Chronicle*, Sunday, August 24, 2003, D3.

that the use of artificial wombs as well as embryo adoption are not morally acceptable based on principles proposed by the magisterium, and although there is a great deal of plausibility to this view, after examining the teaching in greater detail, I believe this view to be incorrect.

In order to better address how principles of Catholic teaching might apply to these cases, a terminological clarification is in order since separate matters, although sometimes related, should not be confused, namely complete ectogenesis, partial ectogenesis, artificial wombs, and embryo/fetus transfer. By complete ectogenesis, I mean the generation and development of a human being outside the womb from the beginning of embryonic existence until the equivalent of 40 weeks gestation. By partial ectogenesis, I mean the development of a human being during the typical gestational period outside the maternal womb but not during the entire gestational period. An artificial womb could be used for either complete or partial ectogenesis. In other words, an artificial womb might be used to generate and sustain development of an embryo or fetus during the entire period of gestation or it might be used to sustain development after partial development within the maternal womb. Embryo transfer (ET) moves the embryo, having never been planted in a womb, to another location, artificial womb or maternal womb. Heterologous Embryo Transfer (HET) moves the embryo into a woman's womb not genetically related to the embryo, or embryo transfer may take place from the Petri dish to the genetic mother's womb – homologous embryo transfer (HOT). Fetal transfer (FT) moves the fetus from a maternal womb to another maternal womb or to an artificial womb. So, let us now consider some of the likely objections to artificial wombs and/or embryo adoption.

## 2 The In Vitro Fertilization Objection

Objections from the illicit nature of IVF can be lodged against both embryo adoption and the use of an artificial uterus. As applied to embryo adoption, the IVF objection would be that embryo adoption normalizes or regularizes IVF as a licit activity. It shows a tacit approval of IVF, profiting so to speak from the wrongdoing of others who create life in the laboratory.

In fact, embryo adoption does not presuppose a tacit approval of IVF any more than normal adoption following fornication, rape, or adultery indicates approval of these activities. Adoptions often involve some sort of prior wrongdoing on the part of the biological mother, father, or both who brought about the conception of a child in circumstance in which they could not properly provide for the child's well-being. But approval and promotion of adoptions in such cases of wrongdoing, such as when a child is conceived through premarital sex, do not constitute the approval or promotion of the wrongdoing itself but rather are often the most reasonable response to an imperfect situation brought about by

human misconduct.<sup>4</sup> The typical case of post-natal adoption is, in other words, like the typical case of embryo adoption.

The *IVF objection* to artificial wombs might be summarized as follows. The Catholic Church should oppose complete ectogenesis since it presupposes the use of cloning, parthenogenesis, or IVF in creating an embryo. From the perspective of *Donum Vitae*, these forms of creating human life are morally objectionable:

[A]ttempts or hypotheses for obtaining a human being without any connection with sexuality through 'twin fission', cloning or parthenogenesis are to be considered contrary to the moral law, since they are in opposition to the dignity both of human procreation and of the conjugal union. . . . Such fertilization (IVF) is in itself illicit and in opposition to the dignity of procreation and of the conjugal union, even when everything is done to avoid the death of the human embryo. (Congregation for the Doctrine of the Faith (CDF), 1987, I, no. 6, and II, no. 5)<sup>5</sup>

However, a condemnation of complete ectogenesis is not decisive for cases of partial ectogenesis, since a woman seeking partial ectogenesis *already has a human fetus within her*. Partial ectogenesis does not involve generation and development *entirely outside* the womb, but rather the continued development of an already generated human being in an artificial womb after transfer from a maternal womb. In other words, from the fact that the Catholic Church opposes IVF, twin fission, cloning or parthenogenesis, it does follow that it would oppose complete ectogenesis, but it does not follow that it would necessarily oppose partial ectogenesis.

### 3 Embryo Transfer Objection

Another possible reason to condemn both the use of an artificial womb as well as embryo adoption is that both involve *embryo transfer* (ET) a morally suspect practice (CDF, 1987, II.B, no. 5). Obviously, embryo adoption involves ET, for the embryo must be transferred from the cold storage facility to the adoptive gestational mother's uterus. If embryo transfer is impermissible,<sup>6</sup> then fetal transfer (FT) from a maternal womb to an artificial womb seems also be impermissible. Partial ectogenesis would necessarily involve FT, and so partial ectogenesis is wrong. We could call this the *embryo transfer objection* to ectogenesis and embryo adoption.

It is important to note, however, that the condemnation of embryo transfer in *Donum Vitae* is always in connection with IVF. The claim, therefore, could be that IVF and ET are objectionable *as a combination*, but this could leave ET alone as morally permissible.

<sup>4</sup>The consideration of the formal terms of the debate, cooperation and complicity, as well as a discussion of the concept of causing scandal may be found in this volume in the chapter by Bro wn and Eberl.

<sup>5</sup>Original emphasis removed.

<sup>6</sup>One example of this argument, resting on an interpretation of *Donum Vitae*, is provided by W.B. Smith (1996). 'Rescue the frozen?' *Homiletic and Pastoral Review*, 96, 72–74.

In the case of embryo adoption (HET), it is not the same couple that is creating the new human being through IVF and then implanting the developing human being in the womb. Although *Donum Vitae* condemns IVF, and although it excludes implantation into a surrogate mother, it does not explicitly condemn the reimplantation of an embryo created through IVF in the genetic mother's womb. The alternative view argued for in this volume by Pachelczyk is counter-intuitive, namely that a couple that has already used IVF (and perhaps repented of this wrongdoing) nevertheless has a further obligation not to implant any of the conceived human beings in the genetic mother's uterus. *Donum Vitae* asks that couples not create human beings via IVF but does not explicitly declare ET in itself illicit.

Indeed, there is reason to think ET is not in itself illicit but rather commendable in certain situations. Surgeons have, in very rare cases, removed an ectopic pregnancy from the site of implantation in the fallopian tube and re-implanted the developing human being in the uterus. Such cases of ET removal are a grave health threat to the woman in question and also provide the only chance to preserve the life of the embryo itself. Unfortunately, most attempts at transplanting ectopic pregnancies fail, but there are a few recorded instances of successful birth following the procedure (Shettles, 1990, p. 2026). Such efforts to save the developing human being in the case of ectopic pregnancy would seem to be morally permissible, so although HET may still be problematic, ET considered in itself is not in itself objectionable. The alternative view, that ET is intrinsically evil, leads to the conclusion that one may not remove the human embryo from a location even if the embryo is doomed to die in that location and threatens the mother's life and even though moving the embryo would alleviate both problems. It is difficult to see how respect for human embryonic and maternal life can motivate such a conclusion.

If ET were unacceptable for some reason, then since embryo adoption necessarily involves ET as a means, it too would be impermissible. However, even if ET were wrong, it may not be the case that fetal transfer (FT) is also problematic. After all, an emergency c-section of a premature baby in danger of dying is not morally problematic, and may in some situations even be morally obligatory. The treatment of premature babies now involves what amounts to primitive artificial wombs in helping the baby survive. If incubator technology advances, premature babies who now die will become viable. So the use of artificial wombs, partial ectogenesis, or highly advanced incubators would not in principle be excluded by Catholic teaching.

#### 4 Integrative Parenthood Objection

*Donum Vitae* defends the importance of integrative parenthood, and from this basis one can also form objections to embryo adoption and partial ectogenesis.

The child has the right to be conceived, carried in the womb, brought into the world and brought up within marriage: it is through the secure and recognized relationship to his own parents that the child can discover his own identity and achieve his own proper human development. (CDF, 1987, II, no. 1)

Artificial insemination using gametes from someone outside the marriage is also impermissible for the same reason:

Heterologous artificial fertilization violates the rights of the child; it deprives him of his filial relationship with his parental origins and can hinder the maturing of his personal identity. Furthermore, it offends the common vocation of the spouses who are called to fatherhood and motherhood: it objectively deprives conjugal fruitfulness of its unity and integrity; it brings about and manifests a rupture between genetic parenthood, gestational parenthood and responsibility for upbringing. (CDF, 1987, II, no. 2)

Embryo adoption constitutes an injustice done to the child by causing a rupture between genetic and gestational motherhood. In the words of Catherine Althaus in an essay predating the one in this volume (2005, p. 115), a woman choosing embryo adoption, “seeks to separate genetic motherhood from gestational motherhood and deny the embryo the dignity appropriate to its development and human existence.” At first glance, these considerations would also seem to exclude any use of artificial wombs as undermining gestational parenthood, which is important in securing the well-being of the child. We could call this the *integrative parenthood objection* to ectogenesis, namely that integrative parenthood involves not separating genetic parenthood, gestational parenthood, and what might be called social parenthood, namely the responsibility for raising and rearing the child.

Thus, as Althaus and Pacholczyk both argue in this book, it is contrary to the union of husband and wife to have a child via embryo adoption and also contrary to the child’s right to *integrative parenthood* to practice embryo adoption or the use of an artificial womb which violates this right by depriving the developing human being of a unified genetic, gestational, and social parenthood.

Although at first consideration, the integrative parenthood objection would seem to exclude both embryo adoption and the use of an artificial uterus, I believe that the interpretation of integrative parenthood offered by critics is too strong to accord with other accepted practices. If this right to be conceived, gestated, and raised within marriage were understood to mean that every child *once conceived* must be brought up within marriage, it would follow that all women who find themselves pregnant outside of marriage (even by rape) must marry the father. Although in many cases of extramarital pregnancy, a marriage of father and mother constitutes the best response to the situation, marriage following pregnancy is not always advisable, let alone a moral duty. In some cases of extramarital pregnancy, marriage is not only gravely imprudent but indeed would not be permissible or even possible, such as when a pregnancy occurs as the result of incest or when a prior valid marriage exists for one or both of the parties in question. Moreover, if the right to integrative parenthood is understood as the right for every existing child to be nurtured in his or her mother’s womb until full-term birth and then raised by the married biological parents, it would follow that every birth mother placing a child for adoption and every couple accepting an adopted child would be doing something wrong. Far from being an evil choice, the *Instruction* notes that adoption is an important service to life: “Physical sterility in fact can be for spouses the occasion for other important services to the life of the human person, for example, adoption, various forms of educational work, and

assistance to other families and to poor or handicapped children” (CDF, 1987, II, no. 8). Birth mothers who generously and bravely place their child in another family through adoption, when this is in the child’s best interest, perform a loving and heroic act and those who adopt children likewise perform a generous act. *Donum Vitae* is therefore, best understood as proposing that one should not *cause a human being to come into existence* unless one can properly care for the child after birth and nurture the child in the womb prior to birth. A child’s right to integrative parenthood involves the marriage of the child’s mother and father, the conception of the child by husband and wife in the act of marriage, the nurturing of the child within the maternal womb, and then the raising the child by his or her biological parents.

However, *once conception has taken place*, it is in certain circumstances permissible, and even praiseworthy, to choose the option of adoption, if in the given circumstances, this option is seen by sound prudential judgment to be in the best interest of the individual child. The Catholic Church’s ongoing support of adoption makes it clear that, although it would be wrong to conceive a child simply in order to place him or her for adoption, it is not always wrong, indeed in many cases it is commendable, to choose adoption following the conception of a child. Whether this adoption takes place at 40 weeks of full gestation, at 25 weeks following conception on account of premature birth, at 7 weeks following conception making use of an artificial womb, or at 7 days following conception in embryo adoption does not, in itself, seem morally relevant *so long as the well-being of the child is not endangered*. Those who choose embryo adoption do not seek to separate genetic motherhood from gestational motherhood. This separation was already chosen, forced upon the child, when the biological parents abandoned the embryo. Embryo adoption does not deny the embryo the dignity appropriate to its development and human existence but rather secures this dignity in the only way possible at this early stage of human development given our current technology. The right of a child to integrative parenthood may apply exceptionlessly prior to the coming to be of the child, but clearly this right admits of exceptions when a child is already in existence.

## 5 Marital Unity Objection

Another kind of objection to embryo adoption focuses on the husband and wife’s relationship as at least potential mother and father to a child. These objections focus on the *marital unity* of the couple in procreation. *Donum Vitae* notes: “The fidelity of spouses in the unity of marriage involves reciprocal respect of their right to become a father and a mother only through each other” (CDF, 1987, II.A, no. 1). From such passages, some argue that it is against the marital unity of spouses for a married woman to become pregnant with a child that is not the fruit of her marriage. Nicholas Tonti-Filippini (2003, p. 124), for example, argues that embryo adoption is excluded on this ground since the



woman becomes pregnant, and thus a mother, through someone other than her husband.<sup>7</sup>

This view is in some tension with aspects of Catholic revelation, indeed its most central proclamation that God became man. If it were an exceptionless norm that a woman may become pregnant only by her husband, the “fiat” of Mary becomes morally problematic. Thomas Aquinas holds that the Virgin Mary was truly married to Joseph (*Summa Theologiae* (ST) III, Q.29.2). Though this marriage was never consummated sexually, Mary and Joseph did share a true marriage bond. Now, at the annunciation, on Thomas’s view, Mary was already married to Joseph, not merely engaged, and consented to become pregnant with a child that was not the fruit of her marriage to Joseph. There is some division among the fathers of the Church as to whether Mary was guilty of any personal sin whatsoever with a few Greek fathers asserting that she did sin personally, but the Western tradition of Augustine, Aquinas (ST III, Q.27.5, ad.2), the Council of Trent, and Pius XII hold that she was free from not only original sin (via the immaculate conception) but also personal sin. However, undoubtedly, there would be no disagreement among believers that in consenting to become the mother of God, Mary did not sin. Of course, this is not a situation of heterologous embryo adoption, since Jesus and Mary are genetically related, unlike cases of embryo adoption. But this consideration is irrelevant in terms of this objection against a woman becoming pregnant through someone other than her husband. One might argue that Mary was the spouse of the Holy Spirit and not of Joseph at the time of the annunciation. However, then one is brought to the difficulty that Mary either had two husbands after marrying Joseph or divorced the Holy Spirit in becoming married to Joseph. A related point is made by John Stanmøer in this volume, who focuses on the real and adoptive fatherhood of Joseph. Obviously, the Annunciation and the Holy family are special cases, but we can also consider other less singular cases.

Another example, and unlike the Annunciation neither singular nor divine, is that a married woman is raped during her fertile period, a time which in previous occasions has virtually always led to pregnancy. Such a woman would have good reason to believe that she may have conceived a child, but this embryo would not have yet implanted in her womb. If it is an exceptionless moral norm that one should become impregnated (in the sense of having an embryo implant) only by one’s spouse, then this woman would be under a moral obligation to use an abortifacient drug in order to prevent the implantation of the newly conceived embryo. Obviously, there is no duty to use an abortifacient; indeed there is a duty not to use an abortifacient.

---

<sup>7</sup>Making similar points, see Mary Geach’s negative response to the question: M. Geach. (1999). ‘Are there any circumstances in which it would be morally admirable for a woman to seek to have an orphan embryo implanted in her womb?’ in L. Gormally (Ed.), *Issues for a Catholic Bioethic: Proceedings of the International Conference to Celebrate the Twentieth Anniversary of the Foundation of the Linacre Centre 28–31 July 1997* (pp. 341–346). London: The Linacre Center.

In addition, embryo adoption does respect the right of spouses only to become parents through one another. Parenthood can be distinguished into various aspects, as noted: genetic, gestational, and social. In embryo adoption, the parents do not become genetic parents through anyone other than each other which is precisely what *Donum Vitae* addressed. However, with respect to social parenthood, in a post-birth adoption, the social parents take on the responsibility for the child whose existence they did not initiate but whose needs they have undertaken to meet. The adoptive mother does not become a biological mother through someone other than her husband, nor does the husband become a biological father through someone other than his wife. However, they both become parents, adoptive parents, by means of another couple. In a similar way, in embryo adoption the social father and gestational-social mother agree to take on responsibility for the well-being of the human embryo. A woman does not become a biological mother through embryo adoption, so she does not undermine the goods of marital unity, any more than do parents who adopt after birth. Adoptive parents do not violate a prohibition on becoming parents, in a genetic sense, only through each other since they become parents of another couple's genetic child (Cf. Tollefsen and Brakman, both in this volume).

Another version of the *marital unity objection* holds that gestation is included as an aspect of the conjugal act the exercise of which should be reserved exclusively to the husband and wife (Althaus, 2005, pp. 116–124; Althaus, this volume). On this view, for example, Pacholczyk argues that procreation includes pregnancy, so those who choose HET separate the procreative act from the unitive act of sexual intercourse much as do those who practice IVF.

E. Christian Brugger has indicated several challenges for the pregnancy as part of procreation argument. First, it is in tension with the idea that a new human being comes into existence when fertilization is complete. When there is a new human being, procreation has already taken place. If procreation – the creation of a new human being – lasts throughout gestation, then abortion does not really kill an innocent human being (Brugger, 2005, p. 98). Second, gestation is a period of *development* of the human child but this implies that the human being is already in existence, and hence procreation has been completed (Brugger, 2005, p. 98). Third, why should “procreation” (conceived really as an aspect of human development) be said to end at birth, for the process of human development continues during infancy and beyond. If so, this would exclude not only embryo adoption but traditional adoption (Brugger, 2005, p. 98). Finally, there are no biological, philosophical, or theological grounds for positing that the entire period of gestation constitutes an ongoing process of procreation (Brugger, 2005, p. 98).

It is more difficult still to see how artificial wombs would undermine marital unity if used after the onset of normal pregnancy. If a woman finds herself pregnant, but in the course of pregnancy it is medically determined that the pregnancy is failing, advanced incubation systems may serve – just as our less advanced intensive care units for premature infants currently serve – to preserve the fragile human life

that has begun. Creating human life outside the womb and continuing to gestate that life outside the womb would be a different matter, for this necessarily involves using IVF or other immoral techniques of creating human life. This case is distinct from saving premature infants whose lives are now lost but who theoretically could be saved by highly advanced neonatal care units (artificial wombs). Thus, I would argue that it is morally wrong to create human life outside the womb and gestate this life in an artificial uterus; but that it is morally permissible (indeed morally good) to save endangered human life via an artificial uterus in cases where a natural pregnancy is failing.

The more difficult question, namely whether artificial wombs should be used to gestate currently frozen human embryos (rather than just to rescue failing pregnancies in progress), is an important question, but one that I shall not attempt to answer in this chapter. I would expect that the same objections that are raised to HET would be raised to the use of artificial wombs in such cases, but fully considering these objections (which very well may be successful against use of artificial wombs but not against HET), falls outside the scope of this inquiry. Of particular concern would be the possibility of abuse, for a human being abandoned by its biological parents and without a gestational mother would potentially be prey to the very worst kinds of abuse, e.g., the harvesting of organs for transplantation and medical experimentation. On the other hand, if I were a frozen embryo I would (if I could choose) prefer to be implanted in an artificial uterus and brought to maturity for 9 months and then adopted rather than remain frozen or worse still be killed or allowed to die. Nevertheless, these concerns both pro and con cannot adequately address the question at hand which remains to be considered in sufficient length perhaps at another opportunity.

## 6 Surrogate Mother Objection

Taking a different approach to these issues, one might also argue that if surrogate motherhood is wrong, then both embryo adoption and the use of an artificial uterus must also be wrong as a form of surrogate motherhood. *Donum Vitae* clearly indicates that surrogate motherhood is morally impermissible:

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; it sets up, to the detriment of families, a division between the physical, psychological and moral elements which constitute those families. (CDF, 1987, II, no. 3)

If surrogate motherhood is wrong, and if embryo adoption and partial ectogenesis are forms of surrogate motherhood, indeed artificial motherhood, then ectogenesis would also be wrong. This might be called the *surrogate motherhood objection* to embryo adoption and partial ectogenesis.

It is important in considering this objection to consider how *Donum Vitae* defines surrogate motherhood. A surrogate mother is defined by the instruction as:

1. The woman who carries in pre gnancy 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.
2. The woman who carries in pre gnancy 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 pre gnancy with a pledge to surrender the child once it is born to the party who commissioned or made the agreement for the pregnancy. (CDF, 1987, II, no. 3)

Neither of these definitions would include embryo adoption or partial ectogenesis as forms of surrogate motherhood. In terms of embryo adoption, the gestational mother does not make a pledge to surrender the child once it is born (an element in both definitions of surrogacy in *Donum Vitae*) but rather intends to raise the child as the social mother.<sup>8</sup> Indeed, embryo adoption would more closely approximate the ideal of integrative parenthood, for in embryo adoption the same woman is the gestational and social mother, whereas in a typical adoption the woman who raises the child did not gestate the baby.

Nor do the definitions of surrogacy offered in *Donum Vitae* exclude the use of an artificial uterus in some circumstances. Both definitions speak of transfer of an embryo. But partial ectogenesis does not necessarily involve transfer of an embryo, since partial ectogenesis could and most likely would involve moving the human fetus from a maternal womb to an artificial womb. Furthermore, both definitions of surrogate motherhood involve pledges by the surrogate mother to surrender the baby once it is born to the party who commissioned or made the agreement for pregnancy. Obviously, an artificial womb cannot pledge or agree to anything, nor would partial ectogenesis necessarily involve giving the baby to those who initiated creation of the baby. Indeed, in typical cases, the woman who otherwise would have chosen abortion does not want to raise the baby. Furthermore, surrogate motherhood according to the definitions given in *Donum Vitae* necessarily involves IVF; as was mentioned earlier partial ectogenesis does not. So the impermissibility of surrogate motherhood as understood in *Donum Vitae* does not entail the impermissibility of using highly advanced incubators in lieu of abortion.

---

<sup>8</sup> I leave to one side the interesting and important question of embryo adoption in which a woman decides to place the child for adoption after birth. In other words, I am not addressing the permissibility of splitting gestational motherhood and social motherhood. Does a woman who adopts an embryo have an obligation also to raise the embryo as her child? If she cannot raise the child as her own, does she have an obligation not to become that child's gestational mother? For a thoughtful answer to these questions, see E. Christian Brugger (2005). 'In defense of transferring heterologousembryos,' *National Catholic Bioethics Quarterly*, 5, 109–111.

## 7 Wrongful Experimentation Objection

However, even if all these objections can be overcome, embryo adoption and partial ectogenesis, at least until well developed, would seem to involve wrongful experimentation. Pope John Paul II (1997, p. 63) writes in *Evangelium Vitae*:

This [negative] evaluation of the morality of abortion is to be applied also to the recent forms of intervention on human embryos which, although carried out for purposes legitimate in themselves, inevitably involve the killing of those embryos. This is the case with experimentation on embryos, which is becoming increasingly widespread in the field of biomedical research and is legally permitted in some countries. Although one must uphold as licit procedures carried out on the human embryo which respect the life and integrity of the embryo and do not involve disproportionate risks for it, but rather are directed to its healing, the improvement of its condition of health, or its individual survival it must nonetheless be stated that the use of human embryos or fetuses as an object of experimentation constitutes a crime against their dignity as human beings who have a right to the same respect owed to a child once born, just as to every person.

If experimentation on human beings before birth is only licit if directed to the healing, the improvement of its condition of health, or the individual survival of the embryo or fetus, then to attempt partial ectogenesis would be wrong. Use of artificial wombs in lieu of abortion would subject the human fetus to risks, not for the sake of the human fetus' s own welfare, but for the sake of the mother being free from pregnancy. Even if techniques of partial ectogenesis are eventually made routine, all early attempts at partial ectogenesis would be wrongful experimentation.

It would indeed be a case of wrongful experimentation to create a human embryo for the sake of implantation in an adopted gestational mother's uterus. This would create an embryo needlessly subjected to risks. However, in the situation of embryo adoption in which the human embryo has already been brought into existence, embryo adoption is currently the only possible means of survival for the embryo and so is not contrary to the interests of the embryo. Indeed, embryo adoption is precisely the only currently available means to ensure the "individual survival" of the embryo, to use the language of *Evangelicum Vitae* and so does not constitute forbidden experimentation on the embryo.

With respect to an artificial uterus, as others have pointed out, ectogenesis could be developed naturally as an extension of saving premature babies. Experimental procedures undertaken to save the life of preemies are acceptable given the principles suggested by John Paul II, since they would be directed towards the individual survival of the premature babies in question. As these techniques are improved by means of this acceptable experimentation, one could arrive at a time when partial ectogenesis occurring very early in pregnancy is no longer an experimental but common procedure subjecting its human subjects to no disproportionate risks. Indeed, one could imagine ectogenesis becoming *less risky* than normal gestation, since an artificial womb would not, presumably, get into car crashes, slip and fall, or be assaulted. In other words, accepting that experimentation should only be undertaken for the good of the one experimented upon still leaves room for the legitimate development of artificial wombs, if these artificial wombs are developed

in the process of trying to save premature infants who would otherwise die. For the many couples who can conceive a child but have difficulty bringing a pregnancy to full term, highly advanced incubators would help remedy a deficiency present in nature and so are artificial in the best sense of the term.

In my opinion, the IVF objection, the embryo transfer objection, the integrative parenthood objection, the surrogate motherhood objection, and finally the wrongful experimentation objection all fail to show the impermissibility of embryo adoption for embryos already in existence and the use of artificial wombs in lieu of abortion. Magisterial teaching, as presently articulated, does not even implicitly exclude either practice.

My remarks, thus far, have sought to remove very reasonable, but I believe ultimately mistaken, objections to embryo adoption and partial ectogenesis based on extrapolations from magisterial Catholic teaching. But what would the positive case for embryo adoption and partial ectogenesis be? Although it may not be wrong in light of recent Catholic teaching on bioethical questions, what reason do we have to believe it a permissible course of action?

The most obvious answer is that both practices could save innocent human life. Although there is no exact data on the matter, there are more than 400,000 frozen human embryos in the USA (Editorial, 2003, A34). The only currently available chance they have to grow to human maturity is through embryo adoption. Indeed, most such embryos will not remain permanently frozen and will die when removed from deep freeze. The general duty of promoting and protecting life suggests the value of embryo adoption.

Likewise, the limited use of artificial wombs could save many human lives. There are approximately 43 million abortions year-round and between 1.2 and 1.6 million per year in the USA alone. If only a small percentage of abortions were eliminated by using artificial wombs, this would be a great service to the human community. Like orphanages long sponsored by the Church, support of highly advanced incubators would help preserve the well-being of innocent human persons who otherwise would be lost.

Both embryo adoption and partial ectogenesis could also be great services to many women. For couples suffering from infertility, embryo adoption allows them the chance to become parents and for women to have the experience of gestational parenthood. Most couples that adopt prefer, I would say reasonably, to adopt babies so as to form the child from the very beginning of life outside the womb. Not without reason, it would be even more ideal for some couples to begin the nurture and care of a new member of the family even earlier, in the first months of life in utero.

Likewise, advanced incubators (artificial wombs) would help many married couples who repeatedly lose pregnancies prior to natural viability because of maternal health problems or various kinds of maternal-fetal incompatibility or pathology. In addition, although some people allege that the Church's teaching on abortion arises from an explicit or implicit desire to subjugate women by tying them down to children and pregnancy, in fact the teaching arises from an affirmation of the equality and dignity of every single human being. It is precisely care and

concern for the well-being of all human beings that leads to a condemnation of abortion, and this care and concern for all people also leads to the approval of highly advanced incubators in lieu of abortion. The foreseen effects of not choosing abortion in cases of crisis pregnancy are characteristically much more difficult for the women involved than for the men. It can happen that the effects of not choosing abortion may be quite challenging, calling those involved to heroic generosity. Since the Church is clearly committed to helping all people to develop morally and humanly, the Church as an institution already works to lessen the difficulties involved in such crisis pregnancy situations through offering homes for mothers in need, providing child care, and making a available other material and spiritual support. Support of partial ectogenesis would be an extension of these efforts to make less difficult the burdens placed uniquely on pregnant women.

Consider this thought experiment. What if instead of considering the use of highly advanced incubators in lieu of abortion, we had discovered an injection that sped up the time of gestation? Rather than 9 months of pregnancy, a woman who received this injection would be able to give birth to a full-term, perfectly healthy baby 9 min later. Suppose further the injection was equally risky for mothers and their babies as normal childbirth – that is to say not absolutely risk-free but well within reasonable parameters. Would use of such injections be condemned as intrinsically evil by the Church? I think the answer would be no. Although the injections would hardly be natural, they are no more contrary to nature than pain medication to ease the agony of labor. Rather than enduring morning sickness, interruption of educational or work schedules, and other hardships associated with 9 months of pregnancy, women would be able to forego these difficulties, if they choose, given due consideration for all the goods involved, especially the well-being of the child in question. Women who might otherwise choose abortion rather than adoption (due to the long months of bonding with the child making adoption later extremely difficult) would be able to place their baby with another family before extensive bonding developed. Those who would choose abortion out of shame could speed up the gestation and deliver before anyone found out. Rape victims would not have to be reminded for 9 months of their sexual assault. Women would be helped; children would be preserved. These considerations apply equally well to the use of artificial wombs as an alternative to abortion. Whether such an injection would be permissible in typical situations of pregnancy is another question. Whether such an injection would also be permissible to “speed up” other stages of human life such as infancy or childhood is still another question. There are goods intrinsic to the practices of bearing or raising children as well as being raised as a child in a normal way. Needless to say, there are also serious questions and perhaps insurmountable obstacles to developing such an injection in a morally permissible way. However, there are very few, indeed extremely few, classes of actions (e.g., murder, adultery, perjury, apostasy) that are deemed by the Church as intrinsically evil, and it is hard to see why an injection speeding pregnancy would fall into the category of things never to be done no matter what the consequences. Like placing a newborn or an older child for adoption, in my opinion it would not be intrinsically evil and nevertheless should not be lightly chosen.

The phrases “embryo adoption” and “artificial wombs” can conjure images of Huxley’s *Brave New World* or scenes from *Star Wars: Attack of the Clones*. A dehumanized family dehumanizes civilization. However, in the first case, adoption makes the best of an already imperfect situation. In an ideal world, all children would be created as the fruit of the love between a husband and wife. In reality, sometimes children are conceived in ways that do not do justice to their fundamental needs and dignity. For example, they are conceived through premarital sex, adultery, and in vitro fertilization. Obviously, the immoral circumstances of conception do not change the intrinsic dignity and worth of the one who is conceived. However, when conception takes place in such circumstances, it is sometimes best for those involved – especially of the one already in existence – that the child is placed for adoption. It makes no important moral difference whether this adoption takes place later or earlier in the child’s life, though from the perspective of the child it would seem that the earlier the adoption takes place the better. And if the adoption can take place at the very beginning of life, if the social mother can also become the gestational mother, then so much the better for that child.

Likewise, the artificial uterus is no more ominous than highly advanced versions of the neo-natal intensive care units widely used today to save the lives of thousands of premature infants. Of course, like any technology it could possibly be abused. But abuse does not take away legitimate use. Each year in the USA alone, nearly half a million babies, more than 10% of births, take place at 36 weeks or before (March of Dimes, 2004). Although at present saving these children is very expensive and many of them become seriously disabled, we can hope that both these drawbacks might be eliminated in the future. In other words, we have primitive artificial wombs and Stone Age partial ectogenesis right now – and they are accepted by everyone. The use of technologically advanced incubators in lieu of abortion is therefore morally acceptable, especially when the other likely alternative ends with a dead child and a wounded woman. In sum, I believe that both embryo adoption and the use of an artificial womb are morally permissible in some circumstances as manifestations of our care for the vulnerable, especially at the beginning of life.

## References

- Althaus, C. (2005). ‘Can one “Rescue” a human embryo? The moral object of the acting woman,’ *National Catholic Bioethics Quarterly*, 5, 113–141.
- Brugger, E.C. (2005). ‘In defense of transferring heterologous embryos,’ *National Catholic Bioethics Quarterly*, 5, 95–112.
- Congregation for the Doctrine of the Faith (1987). *Donum Vitae (Instruction on Respect for Human Life in Its Origin and on the Dignity of Procreation: Replies to Certain Questions of the Day)* [Online]. Available: [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_19870222\\_respect-for-human-life\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19870222_respect-for-human-life_en.html).
- Editorial (May 15, 2003). ‘400,000 embryos and counting,’ *New York Times*, A34.
- Geach, M. (1999). ‘Are there any circumstances in which it would be morally admirable for a woman to seek to have an orphan embryo implanted in her womb?’ in L. Gormally (Ed.),



- Issues for a Catholic Bioethic: Proceedings of the International Conference to Celebrate the Twentieth Anniversary of the Foundation of the Linacre Centre 28–31 July 1997* (pp. 341–346). London: The Linacre Center.
- John Paul II (1997). *Evangelium Vitae (The Gospel of Life)* [Online]. Available: [http://www.vatican.va/edocs/ENG0141/\\_INDEX.HTM](http://www.vatican.va/edocs/ENG0141/_INDEX.HTM).
- Leach, C.L., Greenspan, J.S., Rubenstein, S.D., Shaffer, T.H., Wolfson, M.R., Jackson, J.C., Delemos, R. & Fuhrman, B.P. (1996). 'Partial liquid ventilation with perflubron in premature infants with severe respiratory distress syndrome,' *New England Journal of Medicine*, 335, 761–767.
- March of Dimes (2004). *Premature Birth Rate in U.S. Reaches Historic High; Now Up 29 Percent Since 1981* [Online], February 4, 2004. Available: [http://www.marchofdimes.com/aboutus/10651\\_10763.asp](http://www.marchofdimes.com/aboutus/10651_10763.asp).
- Moyer, P. (February 24, 2001). 'Engineered endometrial tissue may provide new infertility therapies,' in *Reuters Health Medical News*.
- Oderberg, D.S. (2000). *Applied Ethics: A Non-consequentialist Approach* (p.5). Oxford: Blackwell.
- Salon, J.E. (1997). 'Perflubron in infants with severe respiratory distress syndrome,' *New England Journal of Medicine*, 336, 660.
- Shettles, L. (1990). 'Tubal embryo successfully transplanted in utero,' *American Journal of Obstetrics and Gynecology*, 163, 2026–2027.
- Singer, P. & Wells, D. (1984). *The Reproduction Revolution: New Ways of Making Babies* (p.131). Oxford: Oxford University Press.
- Smith, W.B. (1996). 'Rescue the frozen?' *Homiletic and Pastoral Review*, 96, 72–74.
- St. Thomas Aquinas. *Summa Theologiae (ST) III in Opera Omnia iussa edita Leonis XIII P.M.* (Rome: Ex Typographia Plygotta S.C. de Propaganda Fide, 1888–1906).
- Tonti-Filippini, N. (2003). 'The embryo rescue debate: Impregnating women, ectogenesis, and restoration from suspended animation,' *National Catholic Bioethics Quarterly*, 3, 111–137.
- Zimmerman, S. (August 24, 2003a). 'Ectogenesis: Development of artificial wombs,' in the *San Francisco Chronicle*, Sunday, D3.
- Zimmerman, S. (2003b). 'The fetal position: The real threat to *Roe v. Wade*,' in *The New Republic* [Online]. Available: <https://ssl.tnr.com/p/docsub.mhtml?i=20030818&s=zimmerman081803>.

# Index

## A

- Adoption (traditional)
  - theology of, 99, 154–156
- Althaus, C., 10, 14, 16, 30, 43–66, 87, 89, 90, 94, 96, 98, 99, 105, 120–123, 134, 144, 150, 151, 163, 168–169, 201, 204, 240, 243, 312, 315
- American Society of Reproductive Medicine, 19, 226, 264, 272
- Aquinas, T., 26, 30, 104, 105, 109, 114, 116, 125, 203, 314
- Aristotle
  - Aristotelian philosophy, 95, 171, 203
- Artificial womb, 11, 19, 45, 64, 98, 196, 205, 279, 307–313, 315–320
- Asci, D. P., 59
- Augustine, 74, 75, 116, 201, 314

## B

- Barth, K., 18, 199, 204, 207, 210–212, 215
- Berggren, D., 27
- Berkman, J., 7, 11, 12, 15, 17, 19, 20, 26–29, 31, 34, 39, 103, 112, 115, 120, 130, 131, 134, 142, 144, 145, 151, 164, 165, 199, 206, 214, 251–272
- Black, M., 27
- Black, R., 200
- Bouyer, L., 60
- Boyle, R., 26, 27
- Brakman, S. V., 3–21, 29, 37, 43, 64, 99, 117, 119–136, 151, 170, 193, 196, 201, 202, 228, 235, 259, 261, 294, 315
- Brown, B.P., 12, 17, 38, 39, 64, 69, 80, 87, 103–117, 119, 120, 130, 133, 164, 166, 201, 205, 206, 213, 239, 253, 266, 310
- Brugger, E. C., 29, 43, 44, 56, 57, 89, 120, 145, 164, 165, 206, 262, 315, 317
- Bush, George W., 9, 202, 253, 254

## C

- Cahill, L. S., 148, 154, 209
- Callahan, D., 170
- Campbell, C., 170, 171
- Caplan, A., 9–10
- Carey, K. N., 7, 17, 19, 20, 34, 39, 115, 120, 130, 131, 134, 142, 251–272
- Casti Connubii*, 74, 75
- Casuistry, 25, 26, 176, 185, 200, 203, 204, 207
- Cataldo, P., 107, 114
- Catholic social teaching, 16, 17, 127–128, 135, 154, 258–263
- Caulfield, B., 70, 71
- Charity, 17, 98, 127–131, 133–136, 214, 216, 251, 266–268
- Cheely, E. C. C., 4, 8, 131, 253, 261, 275–304
- Cloning, 50, 58, 80, 88, 177, 300, 310
- Cohen, E., 70
- Common good, 17, 18, 35, 36, 61, 128, 141, 146, 147, 154, 156, 157, 209, 251, 252, 260–263, 270
- Conception and fertilization, 177, 193
- Conjugal act, *see also*, marital act; marriage; 10, 16, 30, 43, 44, 46, 48–52, 54–65, 72, 74, 75, 77, 79–80, 88, 89, 105, 122, 133, 134, 143, 145, 146, 147, 168, 205, 206, 232, 233, 235, 315
- Cooperation with evil, 20, 36–38, 40, 166, 173, 204, 213; *See also* 103–117
- Council of Trent, 314

## D

- Davidson, J. A., 87, 164, 165
- Declaration on Procured Abortion, 241
- De Marco, D., 58, 65
- De Rosa, F., 30, 61, 204

- Donum Vitae*, 5, 6, 19, 27, 31, 32, 51, 59, 63, 64, 77, 81, 98, 99, 103–108, 110, 116–117, 120, 121, 122, 123, 124, 144, 162, 163, 167, 168, 170, 201, 238, 242, 243, 308, 310–311, 313, 315, 316–317
- E**
- Eberl, J. T., 12, 17, 38, 39, 64, 69, 80, 87, 103–117, 119, 120, 130, 133, 164, 166, 201, 205, 206, 213, 239, 253, 266, 310
- Ellul, J., 206
- Embryo
- destruction of, 4, 5, 6, 7, 31, 33, 38, 69, 108, 112, 115, 116, 119, 128, 129, 130, 142, 190, 222, 252, 253, 263, 290, 292, 295, 298, 300, 301
  - experimentation on, 17, 31, 106, 268, 316, 318
  - moral status of, 10, 11, 130, 144, 161–162, 175, 182–184, 186, 188–189, 190, 192–193, 196, 209, 270
  - as property, 15, 181, 244, 261, 270, 275–304
  - quality control, 3, 8, 32–35, 38, 112, 142, 225, 227, 256, 257, 271
  - stem cell research on, 4–6, 69, 81–82, 119, 172, 193, 202, 253, 254
  - thawing cryopreserved, 8, 33, 38, 80, 39, 64, 82, 129, 130, 166, 216, 222, 242, 243–244, 255
- Embryo adoption
- and breastfeeding analogy, 76
  - experience of, 12, 18, 231–248
  - feminist perspectives on, 18, 148–51, 175–196
  - and infertility, 7, 79, 80, 117, 133–134, 136, 142, 149, 154, 156, 165, 166, 175, 179, 183, 214, 222, 228, 255, 256, 263, 264, 267, 271, 272, 319
  - legal status of, 8, 10, 13, 15, 17, 18, 19, 44, 111, 131, 133, 142, 163, 189, 190, 191, 202, 221, 222, 223, 228, 244, 257, 261, 275
  - marital fidelity objection to, 27, 43, 56–57, 144–145, 146, 147, 148–150, 153, 163, 167–169, 206, 266–267, 313–316
  - medical aspects of, 3–4, 7–8, 19, 32–34, 107–108, 181, 221–229, 246–248, 264–265
  - moral object of, 10, 15, 16, 30, 43–57, 65, 69–83, 110, 144–147, 173, 203, 205, 208
  - process of, 73, 225–227, 245–248
  - and rape analogy, 57, 59, 78, 143, 145, 240, 309, 312, 314, 320
  - as rescue, 28–29, 76, 106, 143
  - as surrogacy, 12, 25, 26–28, 50, 78, 85, 86, 103, 121, 135, 178, 185–186, 201, 205, 236, 238–239, 255, 282, 287, 292, 296, 300, 317
- Embryos Alive, 201, 254, 257, 258
- Ethical and Religious Directives for Catholic Health Care Services*, 34, 35, 37, 38, 251
- Evangelium vitae*, 105, 122, 260, 308, 318
- F**
- Faggioni, M., 5
- Fatherhood, 45–50, 54, 57, 60–62, 70, 77–80, 167, 231, 234, 235, 312, 314
- Food and drug administration, 253, 280
- G**
- Gaudium et Spes*, 36, 74, 152
- Geach, M., 26, 30, 38, 86–88, 90, 92–96, 120, 144, 149, 151, 165, 252, 261, 314
- Gregory, E., 18, 45, 120, 128, 134, 141, 151, 158, 163, 199–216, 254, 259, 261, 266
- Grimes, D., 96
- Grisez, G., 5, 12, 26–28, 29, 31, 38, 86, 91, 95, 110, 111, 115, 127, 147, 169–170, 205, 216
- Gustafson, J., 200
- H**
- Hauerwas, S., 209–210, 212
- Hume, B., 39
- I**
- Injustice, 87, 108, 117, 124, 136, 165, 252, 253, 259, 312
- In vitro fertilization (IVF), *see also*, cooperation with evil; *Donum vitae*; embryo; embryo transfer; scandal; 3–6, 7, 8, 10–11, 30–32, 72, 80, 112, 130, 162, 166, 179, 205, 221, 229, 254, 264–266, 267, 276–277, 281–283, 304 *and* passim
- Iozzio, M. J., 112, 115–116, 164, 165
- J**
- Jonsen, A., 26, 185
- Justice, 17, 25, 32–35, 39, 40, 53, 69, 142, 147, 171, 176, 182–183, 188–189, 204, 205, 212, 261, 262, 321

**K**

- Kaczor, C., 19, 64, 82, 98, 120, 133, 196, 205, 279, 307–321  
 Kantian ethics, 104, 171, 200, 259  
 Kaveny, C., 169, 213, 266  
 Keenan, J.F., 110  
 Keenan, J., 4, 6, 7, 19, 33, 38, 142, 166, 194, 201, 202, 221–229, 255–256, 266, 293  
 Kennedy, T., 202, 210  
 Kindregan, C., 287, 292, 294  
 Klubertanz, G., 26

**L**

- Larsen, W., 97, 176  
 Lauritzen, P., 10, 18, 25, 120, 158, 161–173, 207, 253  
 Lejeune, J., 164, 165  
 Levin, Y., 70  
 Little, M. O., 195, 196

**M**

- Mahowald, M. B., 8, 10, 12, 18, 124, 131, 148, 170, 175–196, 202  
 Marital act, *see also* conjugal act; marriage, 30, 35, 61, 71–74, 76, 89–95, 97–99, 113, 119, 121, 134, 141, 143, 145, 149, 167, 204, 206, 232–234, 238–242, 313  
 Marriage, *see also* conjugal act; pregnancy; embryo adoption, marital fidelity objection to; ends of, 74–75, 77, 88–90, 94, 201  
 theology of, 45, 151–154, 199–200, 207–215 *and passim*  
 May, W. E., 11, 12, 30, 43, 44, 56–58, 60, 89, 113–114, 120, 121, 144–146, 166, 184, 206, 261  
 McBrien, M., 287, 292, 294  
 Meilaender, G., 206–207  
 Metaphor, 25–30, 34, 39, 40, 91, 165, 215  
 Mitchell, C. B., 169  
 Mitchell, L.A., 120  
 Motherhood  
 adoptive/social, 45, 46, 50, 52, 56, 99, 120, 122, 123, 135, 136, 235, 317  
 genetic, 45–51, 55, 56, 57, 99, 105, 136, 168, 312, 313  
 gestational, 14, 45, 46, 49–51, 55, 56, 57, 99, 105, 143, 144, 146, 150–151, 168, 312, 313, 317  
 surrogate, 25, 27–28, 78, 104, 142, 238–239, 308, 316–317, 319;  
*see also* embryo adoption, as surrogacy.  
*Mulieris Dignitatem*, 74

**N**

- Nathanson, B., 161–162  
 National Commission for the Protection of Human Subjects, 182  
 National Embryo Donation Center, 19, 33–34, 38, 142, 166, 194, 201, 202, 221–229, 254, 255, 293  
 Natural law, 18, 48, 54, 72, 91, 104, 105, 125, 151, 154, 162, 163, 167, 171, 215, 239  
 Niebuhr, H. R., 18, 199, 203–204, 207–208, 210  
 Nussbaum, M., 171–172, 176

**O**

- O'Donovan, O., 203, 204, 206–207, 214  
 Onder, R., 26, 32, 38, 47, 112, 165

**P**

- Pacholczyk, T., 12, 14, 16, 43, 69–83, 86, 87, 89, 90, 92, 94, 96, 98–99, 119–120, 122–123, 129, 130, 132, 143, 144, 149, 201, 204, 205, 232, 240, 241, 243, 245, 252, 261, 311, 312, 315  
 Pontifical Academy for Life, 6, 31, 32, 103, 105  
 Pope Benedict XVI, 17, 29, 127, 136, 201  
 Pope John Paul II, 5, 15, 17, 30, 45, 48, 60, 74, 89, 91, 105, 120, 122, 123, 128, 148, 162, 215, 241, 260, 308, 318  
 Pope Paul VI, 74, 258  
 Pope Pius XI, 74  
 Pope Pius XII, 77, 314  
 Pregnancy  
 in relation to marriage, 52, 55–56, 61, 65, 73–75, 89, 312  
 procreation and, 59, 75–76, 89, 145, 205  
 Principle based ethics, 18, 182–184, 188  
 Protestant ethics, 18, 45, 199–216  
 Pruss, A., 94

**R**

- Ramsey, P., 169–170, 206–207  
 Responsibility  
 of clinicians, 19, 64  
 of embryo adopters, 106, 269, 315  
 of embryo donors, 38, 268–269  
 Rights  
 of embryos, 16, 19, 65–66, 128, 130, 131, 167, 181, 193, 251, 257, 281, 304  
 of parents, 15, 79, 180–181, 186–187, 275–295, 304

Robertson, J. A., 7, 10, 279, 301  
 Roe v. Wade, 161, 228, 277–279, 281, 289,  
 290, 302, 307

## S

Scandal, 16–17, 20, 36, 38–39, 40, 103,  
 110, 113–117, 166, 173, 214, 238,  
 239–240, 253, 266, 310  
 Schudt, K., 31, 206  
 Schweiker, W., 203, 207, 208  
 Smith, J., 117  
 Smith, W., 5, 15, 26, 31, 32, 310  
 Snowflakes embryo adoption, 9, 33–34,  
 142, 165, 224, 254–255,  
 293–294  
 Solidarity, 123, 127–136, 157, 251,  
 260–263, 266, 268–270, 272  
 Stanmeyer, J., 8, 97, 99, 117, 121, 166,  
 182, 231–236, 241,  
 246–248, 314  
 Stanmeyer, S., 8, 97, 99, 114, 117, 121, 166,  
 182, 231, 237–248  
 Stempsey, W. E., 10, 12, 17, 25–40, 44,  
 112–114, 134, 136, 201, 209, 223,  
 227, 253  
 Stevens, D., 221  
 Stewardship  
   of children/embryos, 120, 124–136, 129,  
   131, 132, 212  
   of resources, 17, 35, 36–37, 40,  
   157, 209  
 Subsidiarity, 36, 155, 260,  
 262, 263  
 Surtees, G., 5, 15, 31, 111, 115

## T

Tertullian, 241  
 Theology of the body, 16, 43–55, 60–63,  
   65–66, 89, 91–99, 120, 148, 151, 233  
 Tollefsen, C., 10, 11, 16, 20, 26, 43, 69,  
   85–100, 120, 122, 133, 145, 201, 205,  
   206, 235, 315  
 Tonti-Filippini, N., 15, 16, 26, 30, 39–40, 106,  
   108–110, 112, 113, 122, 123, 144, 145,  
   150, 153, 162, 164, 167–168, 313  
 Toulmin, S., 26, 185  
 Trudeau, G., 161–162

## U

United States Conference of Catholic Bishops,  
 34–37, 39, 126, 251

## V

Virtue, 15, 18, 77, 92, 120, 124, 125, 127–128,  
 135, 152, 155, 157, 200, 203, 207, 208,  
 210, 212, 213, 215, 236, 251, 260–263,  
 266, 267, 269–270, 272  
 Vocation, 48, 117, 121, 122, 127, 129, 133,  
 136, 155, 203, 206, 210, 211, 235, 248,  
 259, 267, 312

## W

Watt, H., 26, 29, 49, 85, 108, 111, 120  
 Weaver, D. F., 3–20, 26, 43, 95, 99, 117, 120,  
 122, 124, 130, 136, 141–157, 162, 176,  
 182, 196, 201, 207, 228  
 Williams, T., 120, 123, 128, 134, 206, 267