In Defense of Transferring Heterologous Embryos

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Respected As Persons

Donum vitae teaches that “no experimental datum can be in itself sufficient to bring us to the recognition of a spiritual soul [in the human zygote]; nevertheless, the conclusions of science regarding the human embryo provide a valuable indication for discerning by the use of reason a personal presence at the moment of this first appearance of a human life: how could a human individual not be a human person?”1 It then plainly asserts: “the human being is to be respected and treated as a person from the moment of conception [earlier in the same section the document says “from the very first instant of his existence”]; and therefore from that same moment his rights as a person must be recognized, among which in the first place is the inviolable right of every innocent human being to life.”2

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1Congregation for the Doctrine of the Faith, Donum vitae (February 22, 1987), I. 1. It continues: “The Magisterium has not expressly committed itself to an affirmation of a philosophical nature, but it constantly reaffirms the moral condemnation of any kind of procured abortion. This teaching has not been changed and is unchangeable.”

2Ibid. (emphasis added). It continues: “This doctrinal reminder provides the fundamental criterion for the solution of the various problems posed by the development of the biomedical sciences in this field: 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.”
For the sake of ethical consideration, then, following *Donum vitae*, the human embryo is a human person, a tiny human person. This means that hundreds of thousands of embryonic human persons presently are in cryogenic cold storage in the U.S. within in vitro fertilization (IVF) clinics. And it is reasonable to assume that without some intervention, the fate of most of them will be death. What rightly can be done?

**The Fundamental Question Formulated**

The general question before us is whether it is ever morally legitimate for a woman to choose to have a biologically unrelated embryonic human person (who is in danger of death because of being stored cryogenically) surgically transferred into her uterus (called heterologous embryo transfer, or HET), in order to rescue him or her from death. To answer this we need to specify the question morally: what is a woman doing (morally speaking) who freely participates in HET under the conditions noted above? What plan of action, what proposal is she adopting by choice? What does she choose? If what she chooses is IVF or surrogacy, even for very noble reasons, then her choice is immoral and our question will be answered in the negative, since IVF generates human life by means other than an act of marital sexual intercourse, and in surrogacy, one formally cooperates in that illicit generation of human life. What does she choose? And is what she chooses contrary to the good of marriage?

In the language of ends and means, we can say that her end is to save an embryonic human person’s life, and her means to do so is by providing the embryo the nurture it needs to survive and flourish. Since the only such means that she (or anyone) can at present provide for abandoned embryos is uterine nurture, she chooses

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3 Apparently 87 percent of the estimated 400,000 “spare” embryos frozen at IVF clinics are earmarked by couples for future reproductive use; it is reasonable to conclude, however, that since they are marked “spare,” most will not be reproductively used by the couples that had them created. In addition, less than 3 percent are earmarked for use in research; approximately 2 percent for destruction, by the couples’ instruction; approximately 2 percent for donation; and under 1 percent for “quality assurance activities.” D. Hoffman et al., “Cryopreserved Embryos in the United States and Their Availability for Research,” 79.5 *Fertility and Sterility* (May 2003): 1066, cited in Richard M. Doerflinger, “On the Morality of Heterologous Embryo Transfer” (paper, The Westchester Institute Scholars Forum: On the Morality of Heterologous Embryo Transfer, Washington, DC, Oct. 28–29, 2004): 1.


5 “By ‘surrogate mother’ the instruction [*Donum vitae*] 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. [Or] 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 the pledge to surrender the child once it is born to the party who commissioned or made the agreement for the pregnancy.” *Donum vitae*, II. A. 3, asterisk note.
as a means to nurture the embryo in her uterus, which by definition constitutes being pregnant. So it is correct to say that she chooses pregnancy as a means; she also chooses as a means the manner by which she becomes pregnant, namely, the surgical transfer of the embryo into her uterus. We can say therefore that she chooses as her means: 1) this surgical transfer; 2) to be impregnated; and 3) to gestate the baby in her uterus (i.e., for the duration of the gestation period or pregnancy); and these she chooses in order to save the tiny person’s life (which is her end).

**Offense against the Goods of Marriage?**

In choosing this way, does she ever choose, as end or means, to generate human life by means other than a marital act? No. The tiny human person has already been generated. Its right to be brought into the world in the context of a marital act has already been infringed. The unitive and procreative meanings of marriage have already been severed by other persons, not the woman here. The baby’s life is in our midst. The moral claim his threatened life makes upon the community is already a reality.

But even given the fact that the conception of a new human life has already taken place, might not the woman who chooses HET still in some way be choosing against the good of marriage, either in its procreative or unitive dimensions? In other words, is not marriage somehow violated when a woman becomes pregnant by means other than by her husband in the conjugal act? Some Catholic scholars answer in the affirmative. Three different arguments have been proposed for why HET is intrinsically evil.

**Procreation Includes Pregnancy**

The first has been proposed by Rev. Tadeusz Pacholczyk, director of education at The National Catholic Bioethics Center in Philadelphia. His argument relies on a novel definition of the term “procreation.” “Procreation,” he argues, should not be understood to be complete at the generation of a new human life but rather at the birth of a child. Procreation by definition includes: 1) the conjugal act; 2) the fertilization of the ovum to engender a new human life; 3) implantation; and 4) the gestation period. One who chooses HET intentionally separates “procreation” (so conceived) from marital intercourse; it follows that choosing HET is a violation of the good of marriage and hence is intrinsically evil.

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6 *Donum vitae* speaks of “the right of every person to be conceived and to be born within marriage and from marriage” (I. 6.). Further on, it teaches: “from the moral point of view a truly responsible procreation vis-à-vis the unborn child must be the fruit of marriage. . . . The child has the right to be conceived, carried in the womb, brought into the world and brought up within marriage.” (II. A. 1.) Footnote 32 (I. 6.) of the document reads: “No one, before coming into existence, can claim a subjective right to begin to exist; nevertheless, it is legitimate to affirm the right of the child to have a fully human origin through conception in conformity with the personal nature of the human being. Life is a gift that must be bestowed in a manner worthy both of the subject receiving it and of the subjects transmitting it.”

The problem with this argument is that it relies on an implausible conception of procreation. A fully distinct human being comes into existence at fertilization. The parents of this child have procreated in the sense that they have participated with God in the bringing about of new human person. If at thirty weeks, or twenty weeks, or ten weeks the child is born prematurely, do we have something less than a fully procreated child? Granted, we have a child who has experienced less than a full gestation period of developmental nurture. And a full gestation period is normally crucial to a child’s healthy development. But this is precisely the point—it is crucial “to a child’s development;” i.e., a child has already been engendered, which then develops. The gestation period entails an early phase of human development, development that will continue through infancy, toddlerhood, childhood, adolescence, adulthood, and old age; development that begins at fertilization. If a child is not fully procreated till birth, what precisely has yet to be created? What does being partially procreated mean? Presumably Pacholczyk would not say the child is partially human, or partially personal, or partially the subject of human dignity, or partially the child of his or her parents, or partially a creature of God, or partially loved by God, or partially destined for beatitude. What can it mean that procreation is not complete till birth other than that after fertilization and before birth, a new human life has received less gestational nurture than is ordinarily warranted for healthy human development in the first nine months of life? If procreation is expanded beyond fertilization, by what logic does it end at birth? Would procreation not include breast-feeding? Fr. Pacholczyk provides no plausible philosophical or biological reasons for grounding his redefinition of the term “procreation” to include the period of gestational human development. Nor does there seem to be any warrant in Catholic moral teaching for concluding that the “inseparability thesis” taught in *Humanae vitae* and elsewhere should be understood in light of Pacholczyk’s definition of procreation.8

Gestational Motherhood Is Different

The second form of the argument concludes that HET is a violation of the good of the fidelity of the spouses in marriage. It runs something like this: becoming pregnant means becoming a gestational mother; becoming a gestational mother by means other than by one’s husband through marital intercourse is always wrong; a woman who becomes pregnant through HET becomes a gestational mother by means other than by her husband through marital intercourse; therefore HET is...

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8“*That teaching, often set forth by the magisterium, is founded upon the inseparable connection, willed by God and unable to be broken by man on his own initiative, between the two meanings of the conjugal act: the unitive meaning and the procreative meaning. Indeed, by its intimate structure, the conjugal act, while most closely uniting husband and wife, capacitates them for the generation of new lives, according to laws inscribed in the very being of man and of woman. By safeguarding both these essential aspects, the unitive and the procreative, the conjugal act preserves in its fullness the sense of true mutual love and its ordination towards man’s most high calling to parenthood.*” Paul VI, *Humanae vitae* (July 25, 1968), n. 12.
always wrong (i.e., intrinsically evil). Nicholas Tonti-Filippini argues in this way.9 One source for the derivation of his negative norm is a quote from Donum vitae which says: “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.”10 The quote, however, is taken entirely out of context. The subsection in Donum vitae in which the quote is found is titled: “Why Must Human Procreation Take Place in Marriage?” That subsection is under the section “Heterologous Artificial Fertilization.” (Emphases added.) Also, the sentences immediately preceding and following the quote are concerned with the procreation of new human persons. It is clear when read in context that the statement, “their right to become a father and a mother only through each other” is intended to be understood as meaning “their right to become a father and a mother only through each other when they procreate.” It is not meant to address becoming a father and mother other than in the process of procreating. Clearly it is not meant to exclude becoming a father and mother through adoption.

Despite the clear incongruity between the context for the Donum vitae norm and the question of the morality of HET, Tonti-Filippini still argues that the proposition asserted in Donum vitae should be read to exclude becoming pregnant through HET.11 He says the nature of the relationship between pregnancy and marriage requires it. Pregnancy, he says, involves a union between the gestational mother and child that is wholly unique: “the child is essentially of her, not only located within her, but bound essentially, vitally to her.”12 She is “literally home” to the child, “home in the sense of a dynamic dependency and interrelationship in which they share an intimate biological and spiritual connectedness.”13 The intimate union has no parallel. He goes so far as to assert that the formation of the mother-child union entails for the mother an “ontological change. . . . In her being, she is [now] a woman with child.”14 It follows, for Tonti-Filippini, that this intimate gestational union “is not separate from but rather an extension and embodiment of the union between the woman and her husband.”15 In other words, pregnancy belongs to the marital rela-


11It is my argument that impregnation has a particular significance and that the Congregation’s statement would rightfully apply to achieving motherhood by impregnation outside of the conjugal relationship.” Tonti-Filippini, “The Embryo Rescue Debate,” 118.

12Ibid., 119 (original emphasis).

13Ibid.

14Ibid., 123 (original emphasis).

15Ibid., 120.
tionship. And this relationship, he concludes, as a psychosomatic unity of husband and wife, faithful, exclusive and total, excludes becoming pregnant outside the marital act.16

Although Tonti-Filippini argues that a woman may never become a gestational mother outside of the marital act, he does not exclude a woman from becoming a mother through the adoption of an already gestated baby. But why apply his negative norm to gestational motherhood and not to adoptive motherhood? Is the relationship between mother and child in gestational motherhood essentially different from adoptive motherhood? Tonti-Filippini argues: “It is one thing for a couple ... to welcome into their home an abandoned, orphaned, or neglected child; it is quite another matter for a woman to be made pregnant, by a medical procedure, with a child not of her marriage.”17 There is “a vast difference,” he asserts, “between pregnancy and childbirth, on the one hand, and assuming a parental relationship to a child in place of his or her natural parents, on the other.”18 In other words, pregnancy is unique.19 And the morally relevant difference implies that becoming a gestational mother by means other than the marital act is per se wrong, while becoming an adoptive mother is not.

But is adoptive motherhood different in relation to the moral duties that arise from the mother-child bond? Granted, it is biologically and psychologically different. From the perspective of the child’s developmental relationship with the mother, gestational motherhood is unique. But does it follow that it entails a moral bond that is wholly unique? Is not a woman who adopts a baby girl at birth a mother to her daughter (especially perhaps in later years) in a way far more morally significant than the child’s nine-month gestational mother (or genetic mother, for that matter)? Such adoptive motherhood, it seems to me, is motherhood in a truly rich, responsible, long-term committed sense. Tonti-Filippini provides no practical principles explaining why becoming an adoptive mother (of a gestated child, not an embryo) outside the marital act—in every sense a mother except biologically and gestationally—is morally legitimate while becoming a gestational mother is not, except to say “an adoptive parent is not a parent in the same sense that a child’s natural parents are parents.”20

Defenders of HET, however, are not arguing that gestational motherhood is not unique in certain ways. And things can be said about gestational motherhood

16“It is my conclusion that 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 ... [H]er generative capacity ... belongs to the marital union, and hence may not be given outside marriage.” Ibid., 124 (original emphasis).
17Ibid., 119.
18Ibid.
19Oleson seems to hold a similar belief. Having stated the norm from Donum vitae (II. A. 1.), he attempts to determine “what is essential to ‘becoming a mother.’” He does so because he thinks the Donum vitae norm singles out only what is “essential” to motherhood. “Becoming pregnant,” he states, is essential to motherhood; gestational motherhood is “intrinsically and essentially a part of the meaning of conjugal motherhood.” Oleson, “The Immorality of Heterologous Embryo Transfer,” 2–4.
20Tonti-Filippini, “The Embryo Rescue Debate,” 118.
that cannot be said about any other human relationship. A woman becomes “home” to the unborn child; she actualizes in her very flesh an intimacy with the gestating child unlike any other parent-child intimacy; pregnancy is a fitting fruit of marital love, and symbolizes, in the fructification of a woman’s womb—in the very morphological development of her body—a woman’s unique participation in the awesome privilege and responsibility of the procreation of new human life. All this is true. But is it relevant to our central question, which is, when a human person is almost certainly going to die otherwise, may a woman choose to sacrifice nine months of her life nurturing that person in her uterus in order to give him or her a chance to live? Tonti-Filippini fails to show how his beliefs regarding 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. His error, as I see it, is that he attributes a sui generis moral significance to gestational motherhood, without providing a convincing reason why such a moral significance is required by the nature of marriage, the marital act, or the mother-child gestational relationship. That is, he attributes an a priori, sui generis moral significance to gestational motherhood, per se and apart from the bringing about of new human life, and then argues that becoming a gestational mother by other means is always immoral. Tonti-Filippini’s conception of pregnancy leads him to apply moral norms to it in a way which is not taught, or even implied, as far as I know, anywhere in Catholic moral teaching.

A Defective Form of the Marital Act

A third form of the argument against HET is proposed by Mary Geach. Geach begins by considering the difference between what a man does and what a woman does in performing the marital act. She says that the central difference is that “the man performs the kind of act that impregnates, the woman the kind of act that gets her pregnant.” This is the basis of Geach’s rather elliptical description of the marital act as performed by a woman: she performs “an act of admission whereby she allows an intromission of impregnating kind.” This is what the woman does, in performing the marital act. This does not mean that she chooses pregnancy each time she has intercourse with her husband. Rather, she chooses an act that is fit,

21“The child arises through the creating hand of God as a gift called forth by their union and has the significance of not displacing, but rather enriching their union. The child is a living symbol of their union in the actuality of them both contributing through their loving act to the transmission of the new life.” Ibid., 120 (original emphasis).

22I could find no such conception of pregnancy in any of the most significant papal writings on marriage, family, and sexual morality, e.g., Familiaris consortio, Evangelium vitae, Mulieris dignitatem, Letter to Families, Letter to Women, Veritatis splendor, and the set of writings compiled under the title Theology of the Body. Nor can it be found in the theology of marriage and sexuality taught by Vatican II.


24Ibid., 3.

25Ibid.
when certain conditions prevail, for impregnation. How does this shed light on the morality of HET? It does so in that a woman who chooses HET actually performs an act of the same description; i.e., she too allows “an intromission of impregnating kind.” The problem is that she chooses this outside the context of the marital act. Her act, therefore, according to Geach, is “a sort of defective version of the female marriage act.”26 For this reason, it is intrinsically evil.

Why is choosing an act of this description outside the marital act intrinsically wrong? Geach never explicitly says. It appears to be because of the close relationship in marriage between acts of an impregnating kind and acts of a generative kind. The marital act is also per se suited to bringing new human life into being; that is, it is an act of a generative kind. The marital act’s generative significance and impregnating significance, Geach asserts, “are usually one and the same thing.”27 To admit an intromission of a generative kind, she says, is “to lay oneself open to an intromission which is of a kind to impregnate one.” Such an intromission—and this seems to be the point on which her argument turns—has “a power not originating from oneself, but coming from another, from the man.”28 Does this mean that when the power originates from someone other than one’s husband in the marital act, then the act is wrong (i.e., that the act’s wrongness lies in the illicit origination of the impregnating power)? Apparently so. However, Geach is not clear on this. What is clear is that she concludes that a woman may never rightly choose to lay herself open to an impregnating kind of intromission other than one by her husband in the marital act. In effect, this means that pregnancy and marital intercourse must never be separated.

This raises the question, why may pregnancy and the marital act never be separated? Again, her account is not clear on this. However, it does seem in her account to be for one of two reasons: either because pregnancy belongs by nature to the marital act, or because choosing an impregnating kind of intromission is itself intrinsically wrong. That is, laying oneself open to such an intromission outside of the marital act is wrong. I address the first alternative at length below. If the second is the case, then Geach is unclear precisely where the wrongness resides. I do not have a problem with her assertion that a woman who chooses to partake in the marital act chooses (among other things) an intromission of an impregnating kind. I am also content to say that this is part of the object of the act that she chooses, by partaking in the marital act. However, it is difficult to understand why choosing such an intromission is only morally legitimate within the marital act. Catholic teaching is clear that choosing an act of a generative kind outside the context of the marital act is always wrong.29 This is because procreation should always be the fruit of marriage and the marital act; and when it is not, it is “deprived of its proper perfection.”30 But this does not address pregnancy or allowing oneself to be impregnated.

26Ibid.
27Ibid.
28Ibid.
29Congregation for the Doctrine of the Faith, Donum vitae, II. A.
30Ibid., n. II. B. 4.
Why is choosing an impregnating intromission always wrong if it is outside the marital act? Surely not simply because such an intromission also physically happens in the marital act. The marital act also contains other characteristics, which are not restricted to only being chosen within marital intercourse. For example, the marital act as performed by a woman is by nature an act of intromission of a genitally dilating kind, but choosing an act under this description—e.g., during a routine obstetrical examination—is not morally restricted to marital intercourse. Geach, similar to Tonti-Filipinni, has invested biological pregnancy (and for Geach the intromitting behavior that normally gives rise to it) with a per se moral significance, i.e., significance independent of procreation, and concluded, because of certain external, behavioral similarities to the marital act, that choosing such behavior outside the marital act is wrong.

**Pregnancy Belongs to the Marital Act**

It seems to me that these three arguments are all in some way committed to the following proposition: when a married couple engages in marital intercourse and the wife becomes pregnant, the pregnancy (and thus the “becoming pregnant”) belongs to the marital act; i.e., it is ex objecto part of what is chosen in choosing the marital act. It follows from this proposition that intentionally separating pregnancy from marital intercourse, as is done in HET, is a violation of the marital act and hence of the good of marriage.

This proposition is problematic. Although it is true to say that pregnancy can result from marital intercourse (when certain conditions are met), it is false to say that pregnancy is part of the marital act. It is false to say so for several reasons. First, in all mammals, both sexual intercourse and pregnancy pertain to the reproductive process, but sexual intercourse does not include becoming pregnant; pairs of animals often have complete sexual intercourse and for one reason or another the female does not get pregnant. So the proposition is not in accord with the biological facts. Second, couples can intend marital intercourse without intending pregnancy. This is the case, for example, with couples who know they are sterile as well as couples practicing NFP for morally valid reasons to avoid pregnancy. But one cannot intend an act without intending everything that one knows essentially pertains to it. So the proposition is not in accord with the moral facts. Third, if it were intrinsically evil to become pregnant by means other than the conjugal act, a clearly incorrect conclusion would follow: fornicators and adulterers would seem to be morally required to practice contraception in order to avoid becoming pregnant.31

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31Fornication and adultery are always wrong. But if a woman fornicates or commits adultery, her getting pregnant as a result of her wrongful act cannot also be wrong or she would be required to avoid getting pregnant. But a fornicator or adulterer who also contracepts not only chooses the wrong of fornication or adultery, but also the wrong of contracepting. If a woman fornicates or commits adultery, she is actually obligated to let the pregnancy take place if she conceives. Fornicators sin by fornicating, and, if they choose to contracept during their act of fornication, they also sin by contracepting. Hence, they cannot seek to avoid a pregnancy by contracepting, but must allow conception to occur, followed by pregnancy. (This point was made to me by Dr. William E. May.)
Where then does this notion that pregnancy belongs to the marital act come from? Perhaps it is from psychological experience. There is perhaps some psychological basis for the conclusion, which gives it a bit of plausibility (even if it does not give it moral support). Men’s and women’s psychological interests in intercourse differ somewhat, and there is an evolutionary basis for the difference. In men, the erotic drive is to ejaculate in a woman’s vagina. In women, the erotic drive seems to go beyond receiving a man’s sperm, to becoming pregnant, delivering the baby, holding him or her, and nursing. Note that the drive includes pregnancy and nursing. Still, the erotic drive does not define sexual intercourse (marital or otherwise), either biologically or morally. This is because intercourse is not comprised of the erotic drive of either the male or the female individually, but rather of the common and uniting act in which both participate.

A Type of Surrogacy?

Are not the actions of a woman who chooses HET identical to those of a surrogate? From the perspective of an observable event as it appears in the physical order, the external behavior carrying out the two choices might look quite similar. But it is a mistake to evaluate a person’s moral choice on the basis observable behavior alone. Veritatis splendor makes this point when it teaches that, when assessing the morality of human action, it is necessary “to place oneself in the perspective of the acting person” and then to assess the “object” of the person’s free choice. By the “object” of a moral act, “one cannot mean a process or an event of the merely physical order, to be assessed on the basis of its ability to bring about a given state of affairs in the outside world. Rather, that object is the proximate end of a deliberate decision which determines the act of willing on the part of the acting person.” Both the surrogate and the embryo-rescuing mother become impregnated by having an IVF-created embryo transferred into their uteruses. (A surrogate might also become pregnant by having her ovum artificially inseminated with the sperm of a man who is not her husband.) However, the surrogate chooses pregnancy in order to fulfill the illicit purposes of the offending person or couple to “have children” in this way; she chooses to carry out, to complete, their plan of action; she chooses to makes herself part of their plan of action. The woman rightly rescuing an embryo deplores the conditions under which the child was conceived, refuses to carry out the plans of the offending persons, and is firmly morally opposed to IVF. Though some measure of cooperation with an IVF clinic would likely be necessary, such cooperation could perhaps be morally legitimate.

Two Analogies

When the morality of a kind of action is in doubt, one way to address the doubt is to compare the kind of action by analogy with another kind of action that is clearly legitimate and analogous with respect to its morally relevant dimensions. My argument is that when a woman chooses HET in order to save the life of an endangered embryonic human person, she morally chooses an act whose end is the rescue of

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32John Paul II, Veritatis splendor (August 6, 1993), n. 78.
33Ibid.
the threatened person (i.e., she chooses an act of rescue) and whose means is a morally legitimate act of nurture. What follows are two brief narratives that aim to illustrate by their analogous relationship the legitimacy of such a choice.

*Analogy 1: Embryo Nurture Is Like Infant Nurture*

1. It is October 1897, well beyond the Frontier of the Dakota Territory. Laura Ingalls Wilder has recently given birth to her daughter Rose. While traveling in from the field late one afternoon she finds an abandoned newborn infant exposed to the elements and in danger of death. She wraps the baby in her cloak and brings him home to her little house. Given the time of year, Laura knows it is too late to travel safely to the nearest town and back again. She and her husband Almanzo will not be free to travel in for approximately seven months, and the trip itself takes approximately six weeks. In the meantime, Laura resolves to provide the baby the precise kind of nurture it needs to have the best chance possible of living and flourishing. The baby most needs mother’s milk. Because of the recent birth of her daughter, Rose, Laura is lactating. Laura therefore chooses, in consultation with Almanzo, to breast-feed the baby for nine months; in other words, *she intends to nurture the baby for nine months from her own body*. When they eventually travel to the town, she will give the baby over to the care of the town physician, and then, perhaps, give him up to a loving family for adoption.

2. A devout Catholic woman named Theresa, aware of the fate that awaits the “spare” embryos at the local IVF clinic, and informed that the clinic permits “spare” embryos to be “adopted” by suitable applicants, resolves to adopt one of the embryos and to provide it with the precise kind of nurture it needs, in order to have the best chance possible to live and flourish. Since no other means of nurture are adequate to the needs of this tiny human person, she chooses to have one of the embryos thawed from its frozen state, and transferred into her uterus. *She intends to nurture the embryonic human life there for nine months*, and then, after birth, perhaps give the baby up to a loving family for adoption.

*LINES OF ANALOGY AND DISANALOGY*

I would like to consider the lines of analogy and disanalogy between these two short narratives. The following five analogous elements, it seems to me, are sufficient to illustrate that Laura’s and Theresa’s respective acts, for purposes of moral evaluation, are both legitimate. In both cases:

- A human person is in danger of death and in need of nurture without which he or she cannot survive.
- An unrelated woman chooses to provide the needed nurture.
- The woman chooses to offer her own body as the instrument of nurture, in the one case her breasts, in the other her uterus.
- The period of nurture is approximately nine months.
- The sacrifice of the woman is considerable.

Some argue that (notwithstanding the fact that the two women do what they do for precisely the same reasons), because the kind of nurture in Theresa’s case is
intra-uterine and in Laura’s case is extra-uterine, the morality of the two acts is essentially different. In other words, pregnancy precisely because it is pregnancy, with all it implies, cannot be rightly chosen, but breast-feeding can. With respect to the moral status of the two acts, pregnancy is fundamentally different. I will formulate and then refute several arguments put forward for this conclusion. Pregn

ancy is different because:

1. Over a nine-month period, a child can be breast-fed by multiple women but gestated by only one. This, however, cannot be a sufficient reason for concluding that pregnancy is fundamentally morally different, because it is a matter of technical fact. As technology advances, there may be ways for a child whose life is endangered in one woman’s uterus to be transferred to another more hospitable uterus, or if necessary more than one over a nine-month period. Even still, the objection does not address my analogy which makes clear that Laura alone will nurture the baby for nine months.

2. Theresa is likely to feel a closer emotional attachment to the child she gestates—to feel more like “mother”—than Laura. This seems to me a gratuitous conclusion. Theresa will emotionally bond with her baby, and so will Laura. Both bonds are likely to be strong. And neither necessarily will be more intense. In fact, Laura’s is likely to be stronger, since she, unlike Theresa, has added to her constant care, the benefit of seeing the child she nurtures.

3. The child Theresa gestates is more likely to consider Theresa her mother than the child Laura nurtures is to consider Laura her mother. This is not necessarily the case. At the end of the respective nine-month periods, the infant Laura nurtures, because its state of awareness is considerably higher than the awareness of the child newly born to Theresa, is perhaps even more likely to consider Laura her mother, than the child Theresa gestates. And when both children look back as adults, both will understand the sacrifices made on their behalves to be very significant.

4. Theresa is rightly called her baby’s (gestational) mother, while it would not be proper to call Laura, who merely breast-feeds her baby, “mother.” This is based on a linguistic convention traditionally derived from the fact that until recently, a pregnant woman was always the biological mother of the child she gestated: she was always rightly called “mother.” In vitro fertilization has confused the bonds of kinship and has raised practical questions that should never have been raised. We now have the category of a so-called exclusively “gestational mother.” The fact that the new category exists does not settle the question we are treating in this essay. The question remains: Is it ever legitimate to become a mother through HET? It is even worth asking whether the term “gestational mother” itself is always appropriate: Is a woman who becomes pregnant through HET always rightly called mother? Should we call a surrogate, for example, who gestates for merely mercenary reasons “mother”? It seems to me that Laura in the example above is more rightly called mother than such a surrogate. Perhaps Laura should be called a “temporary social mother”? Perhaps Theresa should be called a “gestational rescuer” or “gestational nurturer”? The fact that Theresa is able to be called gestational mother

34I thank Chris Oleson, Ph.D. for proposing several of the following reasons.
and Laura is not is not decisive for resolving our question, and therefore should not be taken as compromising the morally relevant elements of the analogy.

5. The biological development of the two children over the respective nine-month periods is significantly different: Theresa’s period covers the development of organs, bones, fingers, face, etc., while Laura nurtures an already formed child. Granted, this does prove that pregnancy is different with respect to biological development. But this is not the issue with which we are concerned. We are concerned with the moral status of the two acts. And in this respect, the objection does not provide a moral reason for concluding that Laura’s nurture is licit and Theresa’s is not.

6. Laura could rightly be paid for what she does, and Theresa could not do so, without making her a surrogate. As it stands, this assertion is ambiguous. It is true to say that surrogacy is immoral. However, it is immoral not because there is a transfer of money, but because the surrogate formally cooperates with those who conceive life through IVF. Receiving money for bearing a child is not in itself wrong. For example, legislators might decide that in order to facilitate the growth in a nation’s birthrate, the government will give a certain amount of money to each woman who gives birth to a live child. Although the accepting of such funds could be immoral, say in the case where a woman gets pregnant solely in order to make money, the accepting of such funds would not be per se wrong. Similarly, a nation like ours might come to recognize the grave immorality of IVF and the industry it spawns, conclude that the right thing to do is to (try to) save the lives of the thousands of “spare” embryonic persons created by that industry, and hence offer financial incentives to women to rescue one or more of the embryos through gestational nurture. The accepting of such funds could be immoral, for example if the woman gestates the embryo solely in order to make money. But if HET is otherwise morally legitimate, merely receiving the money would not make HET wrong.

7. A woman can breast-feed a child without anyone having done anything gravely immoral, but a woman cannot gestate a child that is not hers without someone (else) having done something gravely immoral. The immoral act of another becomes our own only if we wrongly cooperate in his or her act. But the fact that an immoral act brings about a state of affairs that moves another to act, does not imply there is a wrongful cooperation with that act. For example, when a child conceived in fornication is put up for adoption, he is only able to be adopted because “someone has done something gravely immoral.” Does this imply any wrong-doing on the part of those who adopt him? Evil has consequences. Good people often need to act precisely because evil has been done, hence the existence of

35See Congregation for the Doctrine of the Faith, Donum vitae, II. A. 3.

36Ibid. Donum vitae does not explicitly state this, but this is what it implies. In stating that surrogacy is wrong “for the same reasons which lead one to reject heterologous artificial fertilization: for it is contrary to the unity of marriage and to the dignity of the procreation of the human person,” it makes clear that its wrongness lies precisely in its violation of the two-fold goodness of marriage and the marital act that requires that the procreation of new human life always be in the context of a unitive and procreative act of marital intercourse.
the “right to life” movement, crisis pregnancy centers, drug rehabilitation programs, prison ministries, U.N. sanctions, and so on. The question is: What is an appropriate response to evil? No one is denying that the state of affairs giving rise to the question of HET in the first place was brought about by immorality. The question is, given this tragic state of affairs, what can we do? Most opponents of HET argue that we should do nothing to save the life of the hundreds of thousands of persons presently frozen in cryogenic freezers. We should simply let them die! This it seems to me is a tragically inadequate response to a tragic situation.

8. *The sacrifices are not equal.* It is fair to say that Laura’s sacrifice is not as great as Theresa’s, though this is not universally the case, since some women experience breast-feeding as more physiologically and psychologically difficult than pregnancy. But even if it is granted that Theresa’s sacrifice is greater, all this shows is that, all things being equal, she perhaps has less obligation to come to the rescue of the embryonic person (because of the greater sacrifice) than Laura does to the baby on the prairie. But even Laura is under no strict duty to breast-feed the baby; she could feed it barley meal and cow’s milk. Her choice to breast-feed, like Theresa’s choice to nurture in her uterus, is not a strict moral obligation. One might still argue that Laura is at least under a duty to provide some basic nurture to the baby, while Theresa is under no moral obligation to come to the aid of the frozen embryos at the IVF clinic. I think it would be wrong to say Theresa has no obligation to the embryonic human persons unjustly frozen and awaiting death in our country. It seems to me that all persons of good will have an obligation to oppose grave social evil, though not all in the same way. And for Christians this obligation is even greater. I agree that the obligations as they stand in the analogy are not identical. 37 This difference of obligation, however, does not give rise to an irrevocable negative norm which in principle forbids embryo rescue.

*Analogy 2: Emergency Medical Care for a Threatened Fetus in an “Artificial Womb”*

Consider the case of a pregnant woman in an auto accident. The trauma causes her to go into premature labor and she delivers live her fetus at three months of pregnancy. Consider that at the same time, the medical community has at its disposal an “artificial womb” which usually is used by parents wrongly seeking alternative ways to have children. Knowing that the three-month-old baby would die otherwise, would it be morally legitimate for the emergency medical team to bring the baby to the hospital and have it hooked up to the artificial womb in order to save its life, or must the medical team refuse this option and let the baby die? If this would be legitimate for a three-month-old, what about a two-month-old? What about a fetus at four weeks? What about a newly procreated embryo? Would it be morally legitimate to attach an embryo to such a machine in order to save its life? If so, why

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37 Given a different set of conditions, however, Theresa might be under a heightened obligation, say, for example, if the abandoned embryo she is considering rescuing is her dead sister’s rather than a stranger’s; Germain Grisez treats this hypothetical scenario in detail in *Way of the Lord Jesus*, vol. 3, *Difficult Moral Questions* (Quincy, IL: Franciscan Press, 1997), 239–244.
would it not be morally legitimate, if scientifically possible, to bring the same three-month-old child (two-month-old, four-week-old, etc) to the hospital and have it surgically placed into a willing woman’s uterus with the intention of providing what it needs to save its life?

A Final Analogy: Emergency Adoptive Parents

Is there a model that fittingly characterizes the relationship of the heterologous embryo to the gestating woman under the circumstances we have been considering?

Some have argued that only a woman who intends to adopt and raise the baby she gestates could legitimately participate in HET. They argue that it is wrong to plan in advance of pregnancy to become pregnant with a child that one does not intend to raise. The dominant model they propose for the relationship between the embryo and the gestational woman is adoption. The argument runs like this: a woman who consents to having an embryo implanted in her uterus (in order to save its life) becomes that embryo’s gestational mother. In so doing, she becomes decisively responsible for the child. This responsibility is essentially adoptive responsibility; in other words, her choice to accept this responsibility is essentially a choice to adopt the child. Starting from the premise that one should never adopt a child with the intention to give the child up later for adoption, they conclude that a woman should never choose to gestate an embryo that she does not also intend to raise. This conclusion follows from the ordinary adoptive paradigm. But that is not the only plausible paradigm.

I argue that their moral norm, one should never adopt a child with the intention to give the child up later, is erroneously formulated as absolute. It rather should be formulated as, one ordinarily should not adopt a child unless one at the same time intends to raise that child; but in an emergency, one could choose rightly to become a child’s temporary emergency adoptive parent in order to rescue that child from a gravely dangerous and harmful situation. Consider a single woman, with no intention at the time of marrying and beginning a family, traveling in China, who comes across one of the many clandestine child care centers established for the care of China’s “excess” children. She is told that if the children remain long at the center they risk being put to death because of the practice of infanticide that is known to occur in the area. However, if she adopts a child—something local party officials tolerate—she can bring him or her safely out of the country. The child’s nurture and protection would be legally, morally, and spiritually her responsibility; for a time she would be provider, protector, and nurturer—she would be mother. It seems to me that her choice, under those cir-

cumstances, to accept *decisive but temporary parental responsibility* for one or more of the children would be entirely legitimate, even praiseworthy. After having safely removed the child from his or her threatened condition, and provided the necessary protection and nurture, she may give the child to a loving and secure family for adoption. Although it might be optimal for the child to be adopted in the first place by a married couple, and brought back to the U.S. and raised by that couple, it would not be *immoral* for one to assume the temporary responsibility of becoming the child’s emergency adoptive parent, when the alternative is to leave the child in danger of death.

This model, I argue, fittingly characterizes the relationship between the heterologous embryo and the gestational mother. While a gestational mother *may* intend to keep the child she gestates, she is not morally obliged to do so. If, after prayer and reasonable deliberation, she judges that she is able to assume well the duties that arise from becoming a child’s gestational mother, but she has serious reasons not to raise the child, then her choice to save the child from harm by becoming its gestational mother would be morally legitimate, and the harms that result from putting the child up for adoption after birth could be morally legitimate to accept.

John Berkman disagrees. He argues that choosing to gestate another’s embryo by that very fact entails becoming that embryo’s social mother.39 Why? Because of his definition of the true nature of motherhood. Motherhood by definition, he holds, entails an irrevocable covenant between mother and child; one who gestates an embryo becomes mother to that embryo; therefore she by that very fact enters into an irrevocable covenant with the embryo. Just as it would be immoral for a couple to adopt a born child with the intention to give it up later for adoption, so too, he affirms, it would be immoral to choose to gestate an embryo with the intent to give the child up for adoption after birth.40

What is the ground for saying that gestational motherhood always entails a permanent covenant with the child? Why could a person not become someone’s emergency adoptive mother as I have described in my analogy? Why is such a woman not rightly called the child’s mother? She has *exclusive* and *full* responsibility for the child’s welfare; she does not care for the child for someone else; she cares for him for his sake; she accepts and carries out every responsibility of social parenthood, but temporarily. Berkman might respond that any person could become another’s guardian for a time because there is nothing essentially parental in that, but a gestational mother takes on a unique, irreplaceable role that unequivocally establishes her as the child’s mother. But this still begs the question, why is the designation “parenthood” denied to the emergency non-gestational adoptive parent? Is her moral responsibility for the child not truly parental? Saying simply that it is not permanently covenantal is circular (“she does not become the child’s gestational

39“*In gestating the embryo, Mary [i.e., a woman who chooses HET and also gives up the child later] becomes the gestational as well as the social mother of the child.*” Berkman, “Gestating the Embryos of Others,” 328.

40Ibid., 326.
mother and therefore she does not become its true mother”). Why is gestational motherhood “true motherhood,” and emergency non-gestational adoptive motherhood not? Perhaps because what the emergency adoptive mother does could be done by any guardian? However, this is not fully accurate. It can be done only by those who judge correctly that they have the resources to care well for the child for this important period, and by those who are willing to make the sacrifice of time and effort, willing to set aside other pursuits in which they might otherwise rightly engage but which are incompatible with this choice, willing to undergo the suffering of being up at night with the child, the economic cost of providing for the child, the psychological suffering of worrying about the child (after all, there is no one else responsible). What morally relevant parental responsibility does the emergency non-gestational adoptive parent lack? Berkman argues that gestational motherhood is motherhood in its fullest sense, but fails to show how the gestational mother’s motherhood is essentially a different kind of motherhood—except to the extent that it entails a different kind of biological relationship—from emergency non-gestational adoptive motherhood. He fails to show why the biology of pregnancy gives rise to an irrevocable mothering duty, while the very real and grave duties accepted in the choice to become a child’s emergency non-gestational adoptive parent do not. To sustain his argument Berkman needs to overcome the objection that he has illicitly invested biological gestation with moral normativity (i.e., the charge of biologism).

I argue that for very serious reasons, a woman legitimately may choose to become a child’s emergency gestational mother or a child’s emergency non-gestational adoptive mother; that neither necessarily implies a permanent relationship between mother and child; and that the harms that might result from severing the social bond after establishing the gestational or emergency adoptive bond (harmsto the child and to the mother) are legitimate to accept under the circumstances. I concede that gestational motherhood is biologically and developmentally unique, and that it gives rise to an intimate relationship between mother and child. But neither of these propositions entails the conclusion that a woman would never be morally justified in gestating a threatened human life to save it unless she chose first to become that child’s social mother as well.

If Berkman wants to maintain that the term “parent” should only be used in its fullest relational sense, that is, as entailing a permanent covenant with a child, then the conclusion is not to say that a woman who becomes a gestational parent is by that very fact the child’s permanent parent. Perhaps he should rather say that we should use another term for the woman who chooses HET; e.g., a “gestational guardian.” However, I see no reason to dispense with the word “parent” or “mother” when speaking of the gestational relationship with the child, any more than I think the term “parent” or “mother” should be dropped when speaking of those who care for foster children.

**Solicitude to Avoid Scandal**

To obviate misunderstanding or scandal, a woman who chooses to rescue an abandoned embryo through HET should make known as clearly and widely as reasonably possible her principled opposition to the morally reprehensible way the child’s life was brought into existence. She should be sensitive to the fact that some good
and sincere Catholics, noting external behavioral similarities between what she does and pregnancies initiated by those who choose IVF, may feel emotional repugnance at what she is doing. But she should not allow their felt aversion to pressure her to abandon her plan of action or to minimize the seriousness of the consequences of her failing to act. She should affirm the embryonic child’s full personal dignity and find peace and satisfaction in knowing that at great personal cost to herself, she is doing for another what she would want done for her.41

**Multiple Motives?**

Finally, I would like to ask whether the end pursued by the woman (or couple) who participates in HET must be only to save the baby’s life, or may there be other ends which can motivate the choice, including to satisfy a desire for children? If the woman is convinced that both IVF and surrogate motherhood are wrong in themselves and unjust to the human embryos involved, and she is prepared to make this clearly known; if she thinks it is right for her to try to save one or more of these human lives by means of HET; if she is convinced that the tiny individuals created by IVF are to be treated as human persons, and intends to treat them as such, loving them for their own sakes and not as mere means to her own ends;42 then the other morally legitimate benefits that the choice promises (such as satisfying the desire for children) and in which she is interested, do not vitiate the act. A woman might, for example, receive (and be interested in) multiple benefits from buying a certain house in a certain school district, because of location for resale, proximity to work, proximity to her children’s school, proximity to her in-laws, and so forth. However, her chief reason (end) is to fulfill her responsibility under state law to live in the same school district in which her children go to school. In a similar way there may be multiple benefits attracting a woman to gestate an embryo; e.g., to provide a compelling witness in defense of life against a pervasive culture of death, to do penance for her sins, to please her mother who always wanted to be a grandmother, to give her daughter—an only child—a sibling, or indeed to satisfy her desire to have children; but the primary purpose for which she acts must be to rescue the embryonic child from a morally intolerable situation. Perhaps these benefits should not be called ends—reasons she is making this choice—but rather foreseen and welcome side effects. The assumption is of course that she would not proceed with HET unless she really intended to rescue the child. But these other goods may also interest her, and may, it seems to me, partially and legitimately motivate her choice.

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41 I do not intend my defense of embryo rescue to imply that the pastoral problems likely to arise as a result of Catholic participation are not a serious concern. They would likely be complex, and would demand on the part of the Catholic hierarchy and community sustained prayer and attention both within and outside the Catholic community.

42 Grisez recommends three similar things to a woman who participates in HET to help her provide a positive witness against the danger of being misunderstood, in *Way of the Lord Jesus*, vol. 3, 243.