Stem Cells and Spare Embryos

In 2001, embryos and their stem cells were, at least in North America, the bioethical issue of the year. In the United States, following extensive lobbying and unusual reflection, U.S. President George W. Bush decided to prohibit federal funding for stem cell research that would involve the destruction of human embryos. This prohibition had no direct impact on research funded by nongovernmental organizations and foundations, where clinics have continued to use human embryos for research purposes. The issue also captured headlines in much of Europe. In Great Britain, already known for allowing embryo research up to fourteen days,1 Parlia-
ment began 2001 with a new law that would allow cloning of human embryos for

1The U.K. law allowing nontherapeutic research on embryos up to fourteen days was the Human Fertilisation and Embryology Act 1990. This had been a key recommendation of The Warnock Report: Report of the Committee of Inquiry into Human Fertilisation and Embryology, Cmd.9314, (London: Her Majesty’s Stationary Office, 1984). The Warnock Report had argued that while the early embryo has a certain “status,” such a status did not mean that it deserved absolute protection from nontherapeutic experimentation which foresees and intends its death. See The Warnock Report, n. 11.18.
research purposes. On the other hand, in Germany, which has maintained a prohibition on almost any kind of interventions with regard to human embryos, President Johannes Rau publicly and vehemently criticized a statement by Chancellor Gerhard Schroeder that seemed to advocate certain kinds of analyses of embryos for eugenical purposes.2

In Canada, federal health minister Alan Rock brought out a draft version of the Assisted Human Reproduction Act, which sought to bring legislation forward to regulate a variety of assisted reproduction practices in Canada, aimed particularly at protecting the welfare of women and the health of children who might be born through such procedures. It had its own distinctive approach to the issue of embryo research, one that had been advocated for by some in the United States. The draft version of Canada’s Assisted Human Reproduction Act outlaws the creation of embryos exclusively for research purposes, but allows the use of “spare” embryos that were originally created and frozen for possible implantation in a future IVF cycle. If they are no longer desired for possible implantation and would otherwise be stored indefinitely or destroyed, these embryos may, under the proposed Canadian guidelines, be used for research purposes.3

“Spare” Embryos?

The existence and growing number of cryopreserved embryos in fertility clinics in Europe and North America first came to widespread public attention in 1996, when a provision in a 1990 British law requiring the destruction of cryopreserved embryos after five years resulted in the destruction of thousands of embryos in various British fertility clinics.4 At the time, much of the Catholic community argued against the destruction of these embryos, and some Catholic women came forward and offered to gestate these embryos.5 Such offers—and conflicting opinions about their moral appropriateness—touched off a debate more generally about the morality of a woman gestating embryos of which she is not the genetic mother.6


5See also Tom Utley, “Time Runs Out for 3,000 Embryos as Last Appeals Fail,” Daily Telegraph (London), August 1, 1996.

6Catholic World News wire service reported that “Mario Ciampi of the Center for Help to Life said his office had heard from 100 women in the central Italian town of Massa Carrara and more requests were coming in from all over Italy.” CWN Wire Service, “More Than 100 Italian Women Offer to Adopt Frozen Embryos,” July 26, 1996. [http://www.cwnnews.com/news/viewstory.cfm?recnum=1400] (March 26, 2003)

7See, for example, Maurizio Faggioni, O.F.M., “The Question of Frozen Embryos,” L’Osservatore Romano (English), August 21, 1996, 4–5. A summary of some of the early
extent that a debate has ensued in the Catholic community, it has for the most part focused on the gestation of these “spare” embryos.

In this essay, such embryos are referred to as abandoned embryos rather than spare embryos, since the former better captures the changing attitudes or dispositions towards these embryos by those who commission their creation. The point to be highlighted is that what is at one point desired and considered precious is at another point no longer desired and typically discarded or abandoned. Lisa Cahill highlights this situation in noting that the valuation of embryonic life can vary with the context. A “spare” embryo created in an infertile couple’s quest for a beloved child may well end its existence as a research object. Yet if the same embryo had been unaccompanied by equally or more healthy-appearing siblings, hope for a pregnancy would have focused on its own survival in utero.

The question of gestating abandoned embryos is not the only kind of scenario involving women gestating the embryos of others. There are classic surrogacy arrangements, such as the kind made famous in the New Jersey Supreme Court case involving Mary Beth Whitehead. There are cases in which a woman’s sister or mother offers to gestate a child if the woman, for a variety of medical reasons, is unable to gestate a child to term. Also, a considerable number of women undergoing IVF use donor ova; this is most prevalent with women over forty, who have a much better chance of carrying a child to term if they use a donor egg.

debate in Britain can be found in Gerald O’Connell, “Death of the ‘Ice Babies,’” Tablet, August 10, 1996, 1059.

Other terms used to describe embryos left over after in vitro fertilization efforts have ended include “surplus,” “supernumerary,” and “orphaned.”

Lisa Sowle Cahill, “The Status of the Embryo and Policy Discourse,” Journal of Medicine and Philosophy 22.5 (October 1997): 408. One difficulty with Cahill’s account is that she considers embryos “valuable.” However, we typically consider (or should consider) human life invaluable. As James Burtchaell puts it, “Our fellow human beings are not merely the most valuable thing around; they are off the scale, truly incommensurable, not even to be introduced into the rate of exchange whereby we convert the relative values of other things.” James Burtchaell, “How Much Should a Child Cost? A Response to Paul Johnson,” in Stephen E. Lammers and Allen Verhey, On Moral Medicine (Grand Rapids, MI: William B. Eerdmans Publishing Company, 1987), 505.


Addressing Problems of Description

This paper focuses on the morality of gestating abandoned embryos for three reasons. First, this is the particular class of embryos that at present the Canadian and Australian governments propose to grant permission to use for research purposes. Second, the choice by women or couples to implant and gestate these embryos, while up until recently relatively rare, is becoming more common as it receives greater publicity. Finally, the ethics of gestating this particular class of embryos is already a subject of considerable debate among moral theologians. This paper seeks to further this debate through an analysis of the competing moral descriptions already being employed.

One reason why the question of gestating abandoned embryos has produced such debate is that moral theologians do not agree as to how the choice of a woman to gestate an abandoned cryopreserved embryo is most adequately described. Moralists have been divided, alternatively using descriptions such as “surrogacy,” “adoption,” and “rescue.” What makes these alternative descriptions particularly significant is that depending on one’s description, the act to be done can be evaluated as either inherently wrong (i.e., some forms of surrogacy), morally optional (e.g., most cases of adoption), or verging on the morally obligatory (e.g., some forms of rescue).

In this paper I evaluate the adequacy of each of these categorizations, proceeding as follows: first, I present a well-known case of a particular woman’s choice to gestate an abandoned embryo. I then examine the appropriateness of the categories of surrogacy, adoption, and rescue for morally evaluating this case and other analogous cases. I argue that, at least in the type of case I present, if in choosing to gestate an abandoned embryo one is also choosing to adopt the child, then it can be morally appropriate to gestate an abandoned embryo.

This argument has both restrictive and revolutionary implications. On the one hand, the argument is restrictive in that it claims that a commitment to adopt the child one gestates is morally necessary because without such a commitment, the multiplication of “parents” of a child is encouraged, the instrumentalization of women’s bodies for the benefit of others is sanctioned, and the moral significance of the biological and emotional bond that typically forms in gestation is trivialized. On the other hand, the argument that it can be morally appropriate to gestate an abandoned embryo is revolutionary in that it will mean that Catholic moral theology will be

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sanctioning in some instances—I believe for the first time—a possible split between the role of the genetic mother and the gestational mother.

In addition to the central claim regarding the appropriateness of gestating an abandoned embryo, the paper makes and/or implies five additional points. First, it argues that in certain circumstances it is a morally acceptable and good thing for Christian couples to gestate and raise a child of whom they are not the genetic parents. Second, it implies that Christians, in adopting abandoned embryos, should come to see this practice as an important witness analogous to the Christian practice of traditional adoption. Third, the argument of this paper leads to the conclusion that according to Catholic teaching (as for example, that embodied in the Congregation for the Doctrine of the Faith’s 1987 Instruction *Donum vitae*), Catholics now have legitimate reason to cooperate in at least some cases with the IVF industry. Fourth, the paper shows how it is that, contrary to the arguments of individuals and government bodies who argue that experimentation on abandoned embryos should be considered morally acceptable because such embryos will inevitably be destroyed, death is not the inevitable fate of cryopreserved human embryos. Finally, in light of the new moral possibility of adopting abandoned embryos, the paper offers a reflection on the relative moral significance of the roles of the genetic mother and the gestational mother. This forms an epilogue to the paper.

Finally, a word about the understanding of the moral status of the human embryo presupposed in this paper. As a paper analyzing the question in terms of Catho-

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15In the State of Louisiana, where cryopreserved embryos are regarded as juridical persons, the adoption of such embryos is the only alternative to their gestation by their genetic mother or their remaining in a cryopreserved state in perpetuity. See Louisiana, *Revised Statutes* (1986) 9:121–9:133. See also Kevin Stephens, Sr., “Reproductive Capacity: What Does the Embryo Get?” *Southern University Law Review* 24 (1997): 268–271.

16Regarding the use of the term “mother” in this paper, it is intended to signify different biological relationships and/or social roles a woman may fulfill in relation to a child. A woman is a genetic mother if the child in question is conceived from one of her ova. A woman is a gestational mother to a child whom she gestates from conception to birth. Normally the gestational and/or genetic mother is also the “social” mother of a child, but in certain cases (death, adoption, etc.) a woman who is neither the genetic nor gestational mother of a child, but who is typically the primary caregiver to a child and whom the child identifies as his mother, is to be considered the “social mother” to a child. In using these terms, while recognizing the inevitable cultural assumptions involved, no general account of “mother” is attempted or intended. For analyses of various constructions of motherhood in contemporary America, see Linda Layne, ed., *Transformative Motherhood: Giving and Getting in a Consumer Culture* (New York: New York University Press, 1999); see also Sara Ruddick, *Maternal Thinking: Toward a Politics of Peace* (Boston, MA: Beacon Press, 1995).
lic morality, it presupposes two claims. The first is that the embryo, from the mo-
ment of conception, is a living human being. The second is that innocent human
beings should never be intentionally and directly killed. This paper cannot explicate
these positions in detail, so it must suffice to note that these positions: a) are compat-
ible with the best scientific accounts as to what constitutes a living human being:  

Recent Catholic teaching on the beginning of human life can be found, for example,
Congregation for the Doctrine of the Faith, Quaestio de abortu, Declaration on Procured
Abortion, November 18, 1974: Acta Apostolicae Sedis 66 (1974), n. 12, which states “from
the time that the ovum is fertilized, a life is begun which is neither that of the father nor of the
mother; it is rather the life of a new human being with his own growth.” This teaching is
further elaborated in Congregation for the Doctrine of the Faith, Donum vitae, intro., 5, which
states “From the moment of conception, the life of every human being is to be respected in
an absolute way…. No one can, in any circumstances, claim for himself the right to destroy
directly an innocent human being.”

Many ethicists, including some Catholic theologians, ascribe great moral signifi-
cance to whether a living human being is a “person.” However, while acknowledging the
distinction, it has not been accorded significant weight in recent Catholic Church teachings
when considering appropriate protection for the embryo from conception onward. For ex-
ample, Norman Ford notes that “it is obvious that the [Second] Vatican Council unequivoc-
cally declared there is a moral obligation to protect human life from conception even though
it was not prepared to commit itself to any statement on precisely when the spiritual soul is
creatively infused to constitute a person. The Council did not attempt to specify the meaning
of conception beyond the common assumption that human life begins at fertilization. In
other words, the Council taught that human life once conceived ought to be respected and
protected, regardless of when the individual human person begins.” Norman Ford, S.D.B.,
“The Human Embryo as Person in Catholic Teaching,” National Catholic Bioethics Quar-
terly 1.2 (Summer 2001): 156.

For a history of scientific understandings of the embryo in theological perspective,
see Ignacio Carrasco de Paula, “The Respect Due to the Human Embryo: A Historical and
Doctrinal Perspective,” in Identity and Statute [sic] of Human Embryo: Proceedings of
Third Assembly of the Pontifical Academy for Life, eds. Juan de Dios Vial Correa and Elio
Sgreccia (Vatican City: Libreria Editrice Vaticana, 1998), 48–73. For opposing accounts re-
garding St. Thomas and delayed hominization, see Joseph F. Donceel, S.J., “Immediate Ani-
mation and Delayed Hominization,” Theological Studies 31.1 (March 1970): 76–105; and
Benedict Ashley, O.P., “A Critique of the Theory of Delayed Hominization,” in An Ethical
Evaluation of Fetal Experimentation: An Interdisciplinary Study, eds. Donald G. McCarthy
and Albert S. Moraczewski, O.P. (St. Louis: Pope John XXIII Medical-Moral Research and
Education Center, 1976), 113–133.

In 1987, Donum vitae argued that the traditional Aristotelian/Thomistic account of
delayed hominization had been shown to be outdated, based as it is on an inadequate
embryology (n. I, 1). Since Donum vitae, other “delayed hominization” arguments have been
advanced by Catholic theologians, e.g., Norman Ford, When Did I Begin? Conception of the
Human Individual in History, Philosophy and Science (New Rochelle, NY: Cambridge Uni-
Status of the Pre-Embryo,” Theological Studies 51.4 (December 1990): 603–626. Others
Catholic theologians have sought to reaffirm the traditional delayed hominization view, e.g.,
Margaret Farley, who notes that the recent delayed hominization arguments constitute “a
return to the centuries-old Catholic position that a certain amount of development is neces-
b) accord with Catholic principles of respecting innocent human life; and c) take into account the nuances of Catholic principles regarding the ethics of killing, particularly the nuances as to what it means to directly intend the death of another human being and what constitutes an “innocent” human being.19 While both of these presuppositions are challenged by some in the tradition (as indicated in the literature included in the footnotes), they are widely accepted by moral theologians and philosophers, as well as advanced by the magisterium of the Catholic Church.20

**Case Study: Gestating an Abandoned Embryo**

Probably the most widely discussed case regarding the choice to gestate an abandoned embryo is that presented by Germain Grisez in his 1997 volume of moral

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case studies titled *Difficult Moral Questions*. In that case, a twenty-two-year-old single woman—whom I shall henceforth refer to as “Mary”—is wondering about the morality of gestating a cryopreserved embryo that her now deceased sister had commissioned and had planned to gestate. The older sister, who committed suicide in a fit of despair, included in her suicide note a taunt to her younger sister, telling Mary that if she thought the embryo was a little human being, then Mary could keep her upcoming scheduled appointment at the IVF clinic and gestate the embryo herself. Mary, at first hurt and offended by her deceased sister’s suggestion, has, after much reflection, reconsidered and would like to give her embryonic niece or nephew a chance at life. Mary is not married and does not wish to become a single mother, and so, assuming the implantation and gestation were successful, would plan to give the child up for adoption upon birth. Mary has received the necessary legal releases from her deceased sister’s husband. The IVF clinic is willing to implant the embryo if Mary signs appropriate waivers. Finally, Mary has secured the necessary funding for the procedure.

**Surrogacy?**

Catholic moralists who discuss the morality of gestating abandoned embryos presuppose the wrongfulness of surrogacy. However, they are not by any means in agreement as to what constitutes surrogacy. In fact, there are at least four distinct views as to what constitutes surrogacy, three of which are held by moralists discussed in this paper. For the purpose of differentiating the views of the moralists who take up this issue, I am going to take it as a given that surrogacy is wrong and that the point of contention is the determination of what precisely constitutes surrogacy.

First, there is the “payment” view. In this view, surrogacy consists in making a contractual agreement to gestate a baby that will be given up to the commissioning party in return for a payment. In this view, surrogacy requires both a contractual agreement and a payment. The payment view of surrogacy neither sees Mary’s action as surrogacy, nor, for example, the action of a woman who contracts to gestate a frozen embryo for a sibling or friend, as long as there is no payment.

Second, there is the “contractual” view. Here surrogacy is understood to consist in a specific agreement to give a baby to another individual or couple upon birth, prior to and as a condition of the choice to gestate the baby. This view rules out all contractual arrangements, regardless of the lack of a payment or the altruistic intentions of the woman gestating the baby. However, on the contractual view, like the

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payment view, it can be morally appropriate to seek being a gestational mother without also intending to be the social mother of that child. Germain Grisez and William May both take the contractual view of surrogacy. On a literal reading, this is arguably the viewpoint expressed by Donum vitae. According to the contractual view of surrogacy, Mary’s choice to gestate her sister’s embryo is not a case of surrogacy, since her choice to gestate the embryo is not done in tandem with a contract to give up a resulting child to a particular party.

Third, there is the “failure to adopt” view. In this view, the decision to gestate the embryo of another without the specific intent to adopt and raise the child constitutes surrogacy. In this view, the choice to become a gestational mother morally requires an additional commitment to also be the social mother of the resulting child. On the failure-to-adopt understanding of surrogacy, it can be appropriate to choose to become a gestational mother where the relationship between the roles of genetic mother and gestational mother have already been definitively broken by another party, but to intend to gestate an abandoned embryo without a concomitant commitment to raise the child constitutes a form of surrogacy. This is the view taken by Helen Watt. In the failure-to-adopt view, Mary’s choice to gestate but not adopt the embryo constitutes surrogacy, and her choosing to gestate the embryo without intending to raise the child constitutes a form of child abandonment.

Fourth, there is the “genetic” view of surrogacy. In this view, the decision to gestate an embryo of which one is not the genetic mother is inherently wrong. Even if the relationship between the two is already broken and cannot be repaired (e.g., the genetic mother has died), it is wrong to become the gestational mother of an embryo of which one is not also its genetic mother. According to this perspective, Mary’s choice to have an embryo implanted is necessarily wrong, independently of the various factors in the other three viewpoints. This view has been argued—albeit briefly—by William Smith and Mary Geach. A rather more elaborate defense of

23William May has argued that, morally speaking, there is no intrinsic relationship between the roles of the gestational and social mother because in a variety of situations a woman can choose to give up her child for adoption without being involved in any moral wrongdoing. He cites examples of a young, unwed mother who gives up her child for adoption and a woman who gives up for adoption a child she has conceived by rape. For this argument, see William E. May, Catholic Bioethics and the Gift of Human Life (Huntington, IN: Our Sunday Visitor Publishing, 2000), 106–108. However, Mary’s situation is not analogous to the examples May cites, for in this case Mary is fully and actively choosing to become a mother (albeit not genetic and gestational, but only a gestational mother). Furthermore, Mary will be choosing to become pregnant with the prior intention of giving up the child. Thus, May’s analogy fails, because the intent and object of Mary’s act is fundamentally different from those in the examples he cites.


26See William B. Smith, “Rescue the Frozen?” Homiletic and Pastoral Review 96.1 (October, 1995): 72–74; and Mary Geach, “Are There Any Circumstances in Which It Would
the view that a woman’s choice to gestate a cryopreserved embryo is wrong in itself has been put forward by Nicholas Tonti-Filippini.27

As far as I know, no Catholic moralist has defended the payment definition of surrogacy. However, one can certainly imagine a Catholic moral theologian thinking that it would be prudent and appropriate for Mary to secure an agreement with a family to commit to looking after the child she gestates before agreeing to gestate it and that it would not be inappropriate to have that family compensate her for trouble and considerable expenses.

Those who defend the contractual and the failure-to-adopt definitions of surrogacy agree that the choice to gestate an abandoned embryo can, under certain circumstances, be a morally upright and even praiseworthy choice. However, they differ in their assumptions about the kind of moral commitment to a resulting child that is required of the woman who chooses to gestate an embryo and thus differ in their conclusions about how to describe a voluntary gestational mother’s decision to turn a resulting baby over for adoption. These two different definitions of surrogacy are part and parcel of two competing paradigms for understanding Mary’s actions in the example above, and these two competing paradigms will be further compared and contrasted in the section on rescue.

The rest of this section on surrogacy will analyze and critique the viewpoint that I have called the genetic view of surrogacy, the view that a woman’s decision to gestate an embryo of which she is not the genetic mother is inherently wrong. Although Tonti-Filippini presents numerous arguments as to why we should see the choice to gestate a cryopreserved embryo as morally problematic, his primary argument against it is that the choice to gestate a cryopreserved embryo is a violation of the marital relationship. Although somewhat hesitant, he refers to such a choice as an “infidelity,” as “akin to adultery.”28

Clearly, this is not your grandfather’s adultery! Traditionally, adultery was having sexual intercourse with someone other than one’s spouse. When AID (artificial

27See Nicholas Tonti-Filippini, “The Embryo Rescue Debate,” National Catholic Bioethics Quarterly 3.1 (Spring 2003): 111–137. Tonti-Filippini’s views as to what constitutes surrogacy are not altogether clear. At one point he indicates that the decision to gestate an embryo of another is not surrogacy because surrogacy must “involve fertilization” (115). At another point, he says that the choice is surrogacy if the woman does not initiate a mother-to-child relationship—i.e., she intends to give the child up at birth (125). However, what is important for our purposes is that he holds what this paper refers to as the genetic view of surrogacy, namely, that it is wrong for a woman to choose to have a cryopreserved embryo implanted in her womb. In fact, Tonti-Filippini seems to hold an even stronger view; not only is heterologous embryo transfer inherently wrong, but homologous embryo transfer is wrong as well.

28Ibid., 115, 120, 124.
insemination by donor) came along, some argued that this also constituted adultery. Tonti-Filippini’s argument is that to choose to gestate a frozen embryo is for a woman to become a mother (and for her husband to become a father) other than through their marital relations. As evidence for the wrongfulness of this, he cites *Donum vitae*: “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.” 29 However, as Tonti-Filippini notes, *Donum vitae* is here referring to AID. How is it that he comes to think that embryo transfer is wrong?

Clearly, the passage from *Donum vitae* that Tonti-Filippini cites is not intending to say that one cannot become a mother or father by any means other than through the conjugal act. If it did, it would rule out the morally commendable practice of adoption. What the passage is prohibiting is the creation of new life (i.e., conception of new life) by any means other than through the conjugal act.

However, contrary to commentators who see the choice to gestate any embryo as a particular form of nurture, Tonti-Filippini makes an emphatic and original distinction between the in vitro embryo and the in vivo embryo. According to Tonti-Filippini, the cryopreserved embryo has no parents, and not merely in the sense that the embryo has been abandoned by his parents. Ontologically, the in vitro embryo is without parents. 30 As Tonti-Filippini puts it, “[i]t is simply not true to say that a woman has conceived a child when she is not pregnant…. The fact of fertilization occurring elsewhere and by someone else means that that motherhood relationship has not been established at the time of fertilization.” 31 For Tonti-Filippini, the choice to gestate an embryo cannot be first an opportunity to nurture an embryo, for it is first a choice to conceive the embryo!

To say the least, this is an extraordinary claim. Tonti-Filippini is not arguing that the in vitro embryo is not a human being. Rather, he is arguing that it is without parents. According to Tonti-Filippini, a woman “has conceived, that is, become with child, when the embryo is transferred to her body,” and “she then remains uniquely the child’s natural mother throughout his life.” 32 What are we to make of these claims?

It would seem that Tonti-Filippini has gone to extraordinary lengths to show that the choice to gestate an embryo is not a form of nurturing, but rather a kind of “conception.” To do so, he has had to create a whole new linguistic world, e.g., one

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29 Congregation for the Doctrine of the Faith, *Donum vitae*, n. IIA, 1, original emphasis. “Coniugum autem fidelitas, in unitate matrimonii, secum fert mutuam observantiam erga ius utriuslibet, ad hoc ut alter pater aut mater fiat sommummodo per alterum.”

30 Hence “it would seem strange to say that a man or a woman whose gametes are being used to achieve fertilization become father and mother when they are not part of what occurs” Tonti-Filippini, “Embryo Rescue Debate,” 123.

31 Ibid., 122–123. In this view of the embryo, is Tonti-Filippini’s argument the following? We should not think of the woman’s choice to gestate the embryo as adoption because adoption presupposes that one already has parents. Since the cryopreserved embryo does not yet have any parents, to choose to gestate such an embryo is not to adopt but to become the “natural” parents to the embryo. The argument is not clear.

32 Ibid., 123, 122.
in which “conception” is not a biological event but a relationship between an embryo and its mother, one in which what we traditionally call “natural” or genetic parents are not in fact necessarily parents, one in which “[a]n adoptive mother is not the actual mother,”33 and one in which he claims it is “strange” to call gamete donors parents.

With regard to this last claim, whether or not Tonti-Filippini thinks we ought to call those from whom we get our genetic patrimony our “mothers” or “fathers” simply on that basis, it is certainly not strange to do so. Tonti-Filippini is certainly free to make arguments as to why we should rethink our notions of conception, adoption, and parenthood, but we should be very suspicious of a moral argument that requires such radical linguistic innovation.34 For in such cases, we are more likely to find, as Wittgenstein would put it, that our language is on holiday. Although Tonti-Filippini dismisses the paradigm of “adoption” as a category for thinking about the choice to gestate an abandoned embryo (he jettisons it in five paragraphs), it seems that it may be worthy of analysis.

**Adoption?**

The most common analogy drawn with regard to the moral character of the choice of a woman to gestate an abandoned embryo with the purpose of raising it is that it is akin to adoption, to a form of “early” or “prenatal” adoption. There are of course many parallels with traditional adoption. For example, there are a variety of possible motivations for those who decide to adopt. Some choose to adopt when they are confronted with a particular situation of a child they recognize to be in need and decide that they will raise that child. Others decide they would like to raise a child and go about finding the best way to obtain a child to raise.35 Such is also the case with agencies who facilitate “embryo adoptions,” with procedures similar to those involved in regular adoptions.36 Like traditional adoptions, embryo adoptions typically involve a mixture of these and other motivations.

Furthermore, like traditional adoptions, prenatal adoptions seek to compensate for a failure of the traditional norm, namely that a child be raised by its genetic and gestational parents. In the case of traditional adoption, the failure lies in the inability or unwillingness of the genetic and gestational parents to also provide for the child

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33Ibid., 118.

34Tonti-Filippini’s linguistic innovations create innumerable new problems that he does not appear to notice. For example, if the “gestational” mother is the “natural” mother, who is the “natural” father? It will not do to say that the “natural” father is her consort, for what if she is having relations with more than one man?


36For example, see JoAnn L. Davidson, “Case Study: A Successful Embryo Adoption,” *National Catholic Bioethics Quarterly* 1.2 (Summer 2001): 229–233. For an ethical analysis of this case, see my “Adopting Embryos,” 438–460.
as its social parents. In the case of prenatal adoption, the failure lies in the inability or the unwillingness of the genetic parents to provide for the embryo’s gestation.

However, there are also limitations to the analogy of adoption for thinking about the decision of a couple or a woman to have an embryo or embryos implanted in her womb. For in some ways, what is involved here is rather less than adoption, and in other ways, it is more than adoption.

First of all, a couple who are considering adopting abandoned embryos must be aware that unlike the situation with child adoption, they are not necessarily going to be raising the embryo(s) they adopt. What they are engaged in is rather less than adoption in that in all likelihood they will not be blessed with a birth of a child. At present, the likelihood of a birth as a result of IVF-ET ranges from fifteen to forty percent. Thus, a couple must be prepared for the likely failure of the embryo(s) to implant or of miscarriage. The world of IVF is one of heartbreak or unfulfilled desires for the majority of those who enter it. Similarly, those who consider adopting an embryo must be extensively counseled about the full range of emotional and financial costs involved, especially when there is certainly no guarantee or even likelihood that what will result is the birth of a child.

On the other hand, the decision to implant an embryo is also rather more than a simple adoption. For to call the decision to have an embryo implanted in one’s womb merely a case of adoption seems to minimize if not trivialize the significance of the physical complications of gestation as well as the inherent significance of the role of gestational mother. Whereas the moral significance of being the genetic parent of a child is clearly recognized, as is the moral significance of being a social parent, relatively little has been articulated about the moral significance of the gestational relationship between mother and child.

And yet it is a bond that is abundantly clear to the overwhelming majority of birth mothers. Psychologically, the bond that exists between mothers and their unborn and newborn children is profound, evident not only to mothers raising their children, but also to those birth mothers who choose to give up their child for adoption.

37In Andre Van Steirteghem, “Outcome of Assisted Reproductive Technology,” New England Journal of Medicine 338.3 (January 15, 1998): 194–195, it is reported that recent surveys of the results of IVF procedures by the governmental regulating bodies in the United States and the United Kingdom reported delivery rates per treatment cycle of nineteen percent and fifteen percent respectively. For a more detailed breakdown on live-birth rates, see L.A. Schieve et al., “Live-Birth Rates and Multiple-Birth Risk Using In Vitro Fertilization,” Journal of the American Medical Association 282.19 (November 17, 1999): 1832–1838. Tonti-Filippini asserts a strikingly different success rate, claiming that “[t]he survival rate of [IVF embryos] that are eventually transferred to a woman’s uterus is less than four percent.” Tonti-Filippini, “Embryo Rescue Debate,” 117. Presumably, part of the reason for this lower figure is that Tonti-Filippini divides the success rate of other statistics by the number of IVF embryos typically implanted in each cycle. Unfortunately, Tonti-Filippini both acknowledges his figures are “extrapolated” from Australian data and does not explain his method of extrapolation. He is also using Australian rather than U.K. and U.S. figures. It is beyond the scope of this paper to discuss which means of calculating IVF success rates is most appropriate.

A more radical claim regarding the biological bond between mothers and fetuses was published in a Zenit article on the internet in September 2000. In that article, Salvatore Mancuso, head of the Institute of Gynaecology and Obstetrics at the Catholic University of Rome, was quoted as saying “that beginning in the fifth week of gestation … an infinite number of messages pass from the embryo to the mother, through chemical substances like hormones, neurotransmitters, etc. Such information serves to adapt the mother’s organism to the presence of the new being.

Moreover, it has also been discovered that the embryo sends stem cells that, thanks to the mother’s immune system tolerance, colonize the maternal medulla, and adhere to it. What is more, lymphocytes are born from here and remain with the woman for the rest of her life…. From the fifth week there is clearly a passing of cells, but messages begin at conception. Even during the first phase of cellular subdivision, when the embryo is moving in the fallopian tubes, there are transmissions through contact with tissues touched by the moving embryo….

“Finally, the child’s stem cells pass to the mother in great quantity, both at the moment of birth, whether spontaneous or caesarean, as well as at the time of abortion, whether spontaneous or voluntary. These cells are implanted in the mother’s medulla and produce lymphocytes, which have a common origin with the cells of the central nervous system; they have receptors for the neurotransmitters and can make messages pass that the maternal nervous system understands….

“Stem cells have been found in the mother even 30 years after the birth. It could be said, therefore, the pregnancy does not last the 40 canonical weeks, but the woman’s entire life.

“This should be cause for reflection also in regard to the hypothesis of ‘renting’ a womb: In this case, the mother who carries the embryo accepts a being whose genetic
Thus, prenatal adoptions produce a kind of biological relationship between mother and child that does not exist in traditional adoption.

**Rescue?**

Not all commentators on the question of the choice to gestate an abandoned embryo have focused on the character of the gestational relationship between the woman and the embryo. While the focus up to now in this paper has been to characterize in moral terms the relationship between Mary and the embryo/resulting child (i.e., is Mary to be seen as acting as a surrogate mother or as an adoptive mother?), some analyses of Mary’s choice to gestate the embryo do not begin by trying to characterize this relationship. Rather, some commentators analyze Mary’s choice to gestate the embryo first and foremost in terms of the benefits derived by the embryo by Mary’s choice to gestate it. On this approach to the issue, the specifically gestational relationship between Mary and the embryo is downplayed. Indeed, both William Smith and Germain Grisez characterize a woman’s decision to gestate an embryo primarily as an instance of moral heroism, as a choice to “rescue” an embryo. According to Grisez, the end of Mary’s choice is not, as one might expect, to become a (gestational and possibly social) mother, but is rather “to try to save the baby’s life” or alternatively, “rescuing this person in distress.”

In characterizing Mary’s plan as a “rescue,” Grisez draws an analogy between Mary’s action and those of quintessential rescuers (Grisez cites firefighters, police officers, and lifeguards as typical rescuers). But while rescuers save lives or at least deliver others from danger, not all such lifesaving or deliverance is typically considered a rescue. 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.

Patrimony is 100% foreign, and who will ‘modify’ her for the rest of her life. We have no idea of the long-term consequences of such operations.” See “Pregnant Women ‘Inherit’ Some Characteristics of their Children,” Zenit News Service, September 5, 2000. [http://www.zenit.org/english/archive/0009/ZE000907.html#item5] (March 24, 2003)

While many of Mancuso’s apparent claims are well established, the claim that fetal cells are “implanted in the mother’s medulla [i.e., the medulla oblongata, the brain]” would indeed be new and seem to establish a greater biological bond between mother and fetus than is now believed to be the case. Unfortunately, this claim (either by Mancuso or anyone else) has not, as far as I know, been published in any scientific journal and must be treated at present as speculative.


40Ibid., 242.

41It is true that “rescue” is sometimes used in other analogous ways. For example, a rescue may retrospectively be seen as constituting the beginning of a relationship, as in “she rescued him from a life of alcoholism,” or “he rescued her from an abusive family.” However, the standard persona of the rescuer is one who suddenly arrives on the scene, performs his/her
This being the case, is Mary’s choice to gestate an embryo best characterized as a rescue? Grisez claims that Mary is saving the embryo’s life. Leaving aside the question of whether cryopreserved embryos are typically in immediate danger of death, it remains the fact that not all acts of lifesaving or delivering from danger are properly characterized as rescue. Surgeons save lives of patients, appellate defenders save lives of death row inmates, a spouse saves the life of the other in medical emergencies, and, as the Red Cross argued in a commercial following September 11, 2001, we all save lives by giving blood, helping at a homeless shelter, and so on. However, when not succumbing to hyperbole, we do not refer to such doctors, lawyers, spouses, and blood donors as rescuers.

So is Mary’s choice to gestate an embryo an example of a rescue? Is it an emergency situation, and does the rescuer have only a brief and transitory relationship with the person rescued? While one could argue that an infant or toddler discovered with no parents might constitute an “emergency” situation, that is rarely or never the case with cryopreserved embryos. Furthermore, whatever else one might say about the relationship between Mary and the embryo she gestates, it certainly is not a “transitory” relationship. Besides the obvious length of gestation (assuming it is successful), gestation is emphatically not the kind of relationship one considers “transitory.”

Thus, “rescue” is at least somewhat problematic if it is supposed to function as the primary characterization of what Mary plans to do. As the surrogacy and adopt-
tion sections of the paper emphasize, to adequately characterize Mary’s actions, one must accurately characterize the kind of relationship that Mary intends in choosing to gestate the embryo. Grisez acknowledges the significance of naming the relationship between Mary and the embryo she gestates for an accurate moral description when he calls her plan an appropriate kind of “nurturing” and claims that her intent to gestate but not adopt is no more treating the “baby as an object, item, or temporary possession” than does a wet nurse or a foster parent.

So although Grisez’s primary characterization of Mary’s choice is in terms of the benefit to be gained by the embryo (i.e., in Mary’s words, “to give her embryonic niece or nephew a chance at life”), Grisez also acknowledges the need to address the nature of the relationship Mary enters into when she seeks to gestate the embryo. However, since characterizing Mary’s action as either surrogacy or adoption would morally trump his chosen paradigm of rescue, Grisez must offer an alternative description to characterize the relationship. Grisez’s alternative analogy to provide the moral characterization of the relationship that Mary enters into with her choice to gestate the abandoned embryo is that of a foster parent. While it has already been argued that there are inherent difficulties in describing Mary’s action as rescue, if Grisez can show that “foster parent” is the best analogy for describing Mary’s relationship with the embryo, then it would make calling Mary’s action in gestating the embryo a rescue or something akin to that much more plausible.

However, the category of foster parent is not an apt analogy for characterizing Mary’s gestational relationship to the embryo. There are three important social disanalogies between Mary’s actions and those of a typical foster parent. First, unlike a gestational mother, foster parents volunteer to and are hired by governmental agencies. Secondly, unlike the gestational mother, foster parents are never legally the parents of the child. Third, unlike the gestational mother, foster parents are paid by the government, which gives their relationship to the child a very different character. For all of these reasons, the analogy between the actions of a foster parent and those of Mary in gestating an embryo is at best problematic.

The disanalogies between the role of the foster parent and that of Mary are also evident when examining the legal status of Mary in relation to her child. Unlike a foster parent, who is never legally granted ultimate responsibility for a child, Mary, in choosing to become a gestational mother, becomes ultimately responsible for her child. Assuming the child survives to birth, Mary will have the power to decide whether she will raise the child, and if she decides not to raise the child, she has the power to decide who will. A foster parent, by virtue of the nature of the foster parent relationship, never has that power. However, Mary certainly does have that power. Thus, while foster parents can certainly harm their foster children by deciding to no longer care for them, a foster parent can never act in the way that Mary necessarily does if she chooses to give her child up, because the foster parent has never had the kind of responsibility for the child which Mary has willy-nilly. Thus, if Mary gives up her child for adoption, she “abandons” the child in a way a foster


Ibid., 243.
parent cannot. For all of these reasons, far from providing support for describing Mary’s action as a rescue, referring to Mary’s relationship to the embryo in gestating it as that of a foster parent problematizes the analogy of rescue all the more.

**Adoption as the Appropriate Model**

I have argued in the previous section that the paradigm that understands Mary’s action as a rescue is weak in its own right, and the correlative understanding of Mary’s relationship to the embryo as one of foster parent is also problematic. Furthermore, the upshot of the discussion of the paradigm of rescue has been that the paradigm of rescue, while prescinding at first from a characterization of the relationship between Mary and the embryo, in fact requires a characterization of the relationship for the paradigm to be workable. While the category of foster parent was found to be inadequate as a characterization of the relationship between Mary and the embryo, the fact that Grisez considered it necessary to articulate and defend that understanding of the relationship to the embryo provides further evidence that the primary question that needs to be resolved to morally characterize this case is that of the proper description of the relationship between Mary and the abandoned embryo she intends to gestate. It follows from this that while up until now the most common paradigms presented for understanding the morality of Mary’s choice are surrogacy, adoption, and rescue, the primary decision to be made to morally characterize Mary’s choice is between the categories of surrogacy, adoption, and foster parenting.

Based on the criticisms of the foster parent analogy provided in the last section, I conclude that adoption is a more adequate characterization of Mary’s choice than is that of foster parenting. This then leaves us with the question of whether to characterize Mary’s choice as adoption and/or as surrogacy. Whether Mary’s choice is to be seen as surrogacy depends on which of the four definitions of surrogacy differentiated in the surrogacy section of the paper is accepted. If one accepts the genetic view of surrogacy, then Mary could be both an adoptive mother and a surrogate mother. On the payment, contractual, and failure-to-adopt understandings of surrogacy, if Mary’s choice is one of adoption, then her action would not be seen as surrogacy. Considering the kind of “linguistic innovation” that we saw was necessary in order to argue that the choice to gestate an abandoned, cryopreserved embryo is inherently wrong, it seems fair to conclude that there is very little reason to believe that Mary’s action should be characterized as a form of surrogate motherhood.

On the basis of the arguments made in this paper, I conclude that the appropriate paradigm for understanding Mary’s action and those analogous to it is that of adoption. Mary, in choosing to gestate the abandoned embryo, enters into a relationship with the embryo as its gestational mother. Taking this to be the most adequate analogy to actions like those of Mary’s in similar situations, Helen Watt argues for the following moral norm: “It is therefore wrong to plan in advance of conception (or, if one is not the genetic mother, in advance of gestation) to bear a child who will be brought up by others. A genetic mother may plan to bear and then give up for adoption a child who already exists, but may not conceive a child intentionally who she does not intend to carry, give birth to, and bring up herself.”

At this point, it is perhaps important to note that this is not the recommendation that Grisez gives in his discussion of the case of Mary. Grisez characterizes Mary’s action in choosing to gestate the embryo as one of “rescue,” that Mary’s relationship to the embryo in gestating it should be seen as analogous to a foster parent, and that it can be morally appropriate for Mary to gestate the embryo with the plan that, assuming the gestation is successful, she will give the resulting child up for adoption.47 While Watt agrees with Grisez that it can be morally appropriate for Mary to choose to gestate the embryo, Watt disagrees that Mary can choose to do so if she also plans to give the successfully gestated child up for adoption.

For Watt the moral description of the relationship between Mary and the embryo she gestates is conceptually prior to an evaluation of the benefits to be accrued by an embryo in such a situation. Under Watt’s adoption paradigm (which I believe to be the most adequate one), the question of whether Mary’s choice is consistent with the adoption paradigm must be resolved before one can weigh the considerable good consequences for the embryo of receiving, in Mary’s words, “a chance at life.” According to Watt, Mary’s action in choosing to gestate the embryo (which Watt considers to be a choice of adoption) is morally incompatible with her intention to give up the child at birth. Since one should never adopt with the intention to later give up the child (i.e., renounce one’s adoption or abandon the child) in Watt’s view, Mary’s choice to gestate with the intent to give the child up constitutes a wrongful form of adoption.

For both Grisez and Watt, the question of whether Mary in choosing to gestate the child and then give the child up for adoption constitutes a form of surrogacy (and is thus wrong) seems to follow from their prior convictions as to whether Mary’s actions would be wrong. According to Grisez, since Mary is not gestating the embryo for some ulterior motive (i.e., the payment view of surrogacy) nor is gestating the embryo with a prior agreement to give up the child to someone else (i.e., the contractual view of surrogacy), Mary is thus not engaging in surrogacy. However, since Mary is gestating the embryo without the commitment to adopt the embryo (i.e., the failure-to-adopt view of surrogacy), Watt understands Mary’s action to be a form of surrogacy.

The differences between Grisez’s and Watt’s definition of surrogacy do not, I believe, depend on anything intrinsic to the notion of surrogacy itself, but rather on differing understandings of the inherent moral significance of the role of the gestational mother. Comparing Grisez’s and Watt’s analyses, it is clear that Grisez attributes less significance to the role of the gestational mother than does Watt. Unlike Watt, Grisez does not see the wrongfulness of planning to give up a child for whom the woman has been the gestational mother. This disagreement between Grisez and Watt is not particularly surprising, because up until now the Catholic community has not extensively considered the moral significance of the role of the gestational mother, independently of and in relation to the role of the

47See Grisez, *Difficult Moral Questions*, 240–244.

If the argument that I have been making is correct, and if Mary, in choosing to gestate an abandoned embryo, also chooses to adopt the embryo, then the example of Mary provides an example of the first situation in which, according to Catholic teaching, it can be considered morally appropriate for a woman to initiate a relationship with an embryo which separates the role of genetic mother from that of gestational mother. Traditional adoption has always separated the roles of the genetic and gestational mother from the role of the social mother. Now for the first time Catholic biomedical ethics is indicating that the significance of the roles of genetic mother and gestational mother can and should be examined independently.

Epilogue: The Genetic versus the Gestational Mother

As I noted in this paper, the possibility of separating the role of the genetic mother from that of the gestational mother is fundamentally new. The new possibility has many implications. In much of current bioethics that deals with the relationship between parent and child, the typical presumption is to equate (or almost equate) genetic parenthood with parenthood per se. Of course, in the normal and ideal course of events, the genetic, gestational, and social roles of parenthood all go together. But since it is now clear that the roles of the genetic and gestational mother can be separated, why is it so readily assumed that providing an ovum qualifies one as the genetic mother. While this issue is beyond the scope of my task in this paper, I say a bit more about this question in the epilogue of this paper.

In conclusion, I have sought to show that formulating an accurate characterization of a decision by a woman to have an abandoned embryo implanted in her womb is the central task in thinking about the morality of such a choice. I have argued that the most adequate moral description of what Mary is undertaking in agreeing to gestate an abandoned embryo is that she is consenting to adopt the embryo. In adopting the embryo she is offering a uniquely important, intimate, and necessary form of nurturing. Furthermore, based on what has been noted earlier, in gestating the embryo Mary becomes the gestational as well as the social mother of the child, and in so doing, her role as mother is significantly greater than if she adopted the child at birth.49


49See note 35 above.
mother of a child, even after the created embryo has been implanted in the womb of another woman? On the contrary, a woman’s consenting to gestate a child, to give a child life that it otherwise could not have, can certainly be argued to be at least biologically significant in terms of what is necessary for the child to actually be born. Now we can and sometimes do separate the act of consent to the creation of an embryo and the act of consent to gestate a child. In this context, it would seem that the consent to take on the role of a gestational mother requires significantly more maternal commitment than does the consent to become only a genetic mother (i.e., to donate ova for the creation of embryos). 50 This is a subject that requires much more reflection. However, the unquestioned priority that has typically been assumed to lie with the role of the genetic mother as compared to the role of the gestational mother must continue to be questioned.

50 In 1988, George Annas addressed the question of the relative significance of the roles of the genetic and the gestational mother, and concluded that, at least for legal purposes, “because pregnancy and childbirth is much more psychologically and physically demanding than egg production, it seems reasonable to designate the gestational mother, rather than the genetic mother, the legal or “natural” mother of the child.” See George J. Annas, “Death Without Dignity for Commercial Surrogacy: The Case of Baby M,” Hastings Center Report 18.2 (April/May 1988): 24.