The Lord said to Cain: “What have you done? The voice of your brother’s blood is crying to me from the ground” (Gen 4:10). *The voice of the blood shed by men continues to cry out, from generation to generation, in ever new and different ways.*

Over the past decades, the use of assisted reproductive technologies has dramatically increased in the United States and throughout the world. Many of these technologies involve the use of in vitro fertilization (IVF). In the practice of in vitro fertilization, many more embryos are produced in the laboratory than are transferred into the woman seeking pregnancy. The remaining embryos are desiccated and frozen, presumably for future use by the couple seeking pregnancy. Often, however, the couple never returns to have these “spare” embryos implanted. Divorce, death, or, most often, a decision not to seek further pregnancies results in numerous “orphaned” embryos. This is not a small problem. A recent survey by the

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1Pope John Paul II, *Evangelium vitae* (March 25, 1995), n. 10 (original emphasis).
Society for Assisted Reproductive Technology and a RAND Corporation study estimated that 400,000 unclaimed embryos reside in what the late French geneticist Jerome Lejeune called “concentration cans.” Nicholas Tonti-Filippini estimates that in his country more than three in every thousand Australians are held in a frozen and anhydrous state in IVF clinics. These embryos cry out at the injustice of their treatment by these clinics, and many Christians concerned with their plight wish to rescue them, as Christians rescued and adopted exposed infants in ancient Rome. Meanwhile, in 2002, the Department of Health and Human Services launched a Public Awareness Campaign on Embryo Adoption, with plans to distribute approximately $900,000 to agencies to support embryo donation and adoption. This paper will address whether it might be a morally viable option to attempt to “rescue” a small number of these embryos by heterologous embryo transfer, i.e., transferring embryos into the womb of a woman who is not their mother. I will conclude that significant practical and moral objections have not been overcome by proponents of this practice.

Frozen Embryos: The Moral Dilemma

The most often-employed assisted reproductive technology is commonly referred to as in vitro fertilization (IVF). In reality, achieving conception in this manner requires two procedures, in vitro fertilization and embryo transfer (IVF and ET). First, egg and sperm are brought together in vitro, and then, after a period of incubation, the embryo is transferred to the woman’s uterus. The Catholic Church, through the Congregation for the Doctrine of the Faith (CDF) in Donum vitae (DV), spoke unequivocally in 1987 about IVF as being morally illicit, but at the same time spoke about the respect due the human embryo: “The human being must be respected—as a person—from the very first instant of his existence.” Similarly, through the Second Vatican Council, the Church teaches, “Life must be protected with the utmost care from the moment of conception: abortion and infanticide are abominable crimes.”

7 Congregation for the Doctrine of the Faith, Donum vitae (February 22, 1987), II. B. 5.
8 Ibid., I. 1.
In *DV*, the CDF condemned the freezing of embryos, or cryopreservation, as “an offense against the respect due to human beings” even “when carried out in order to preserve the life of an embryo.”10 The question arises whether it might be morally licit to “rescue” or “adopt” some of the hundreds of thousands of abandoned embryos by transferring them into the womb of a woman who is not their mother. The medical procedure involved would properly be called *heterologous embryo transfer* (HET), since the embryo would be transferred to a woman who is not genetically his or her mother.11

There exists a serious temptation to consequentialism: abandoned embryos will all perish if they are not transferred into a woman’s uterus; therefore, HET is moral.12 This pure consequentialist reasoning is not consistent with the Catholic moral tradition. If HET is intrinsically evil, even the compelling motive of saving the lives of abandoned embryos does not justify it. Here, the Church respects the Pauline injunction that one may not do evil that good may come of it,13 reiterated by Pope John Paul II in *Veritatis splendor*.14 The question, then, is whether HET represents an intrinsic evil to be avoided, or an extraordinary or supererogatory act of great charity.

The *prima facie* case against heterologous embryo transfer would appear compelling. In *DV*, the Congregation for the Doctrine of the Faith explicitly condemns a wide variety of assisted reproductive technologies. These include artificial fertilization with donor sperm or ova,15 artificial fertilization with husband’s sperm (AF-H),16 heterologous IVF and embryo transfer (IVF and ET),17 homologous IVF and embryo transfer,18 and surrogate motherhood.19 A detailed discussion of the CDF’s condemnation of each of these technologies is beyond the scope of this paper, but it is clear that this condemnation is not solely based on “the destruction of embryos produced *in vitro.*”20 Homologous artificial fertilization (artificial insemi-
nation with the husband’s sperm or use of IVF by a couple using their own ga-
metes), for example, is condemned because it involves “seeking a procreation which
is not the fruit of a specific act of conjugal union, [and] objectively effects an analo-
gous separation between the goods and meanings of marriage.”21 One might ask
whether HET is immoral because it seeks a pregnancy that is “not the fruit of a
specific act of conjugal union,” perhaps in a more radical way, because at least in
AF-H, the pregnancy is the child of the wife and her husband. Likewise, AF-H is
found to be immoral in cases when it is “a substitute for the conjugal act.”22 It
appears difficult to argue that HET does not “substitute for the conjugal act” in the
achievement of pregnancy. Nevertheless, a debate exists between orthodox Catho-
lic theologians who have raised objections to the morality of HET, and other ortho-
dox theologians who have defended the practice under certain circumstances. This
paper will look first at some technical aspects of embryo freezing and transfer, and
then at some of the moral objections to HET, and will finally examine whether these
objections might be overcome.

The Origin of the Problem: IVF

The “spare embryos” being discussed have been produced in IVF clinics. The
first successful IVF procedures were performed in rabbits in 1959. In humans the
first successful in vitro fertilization with subsequent embryo cleavage was reported
in 1944, but a successful IVF pregnancy was not achieved until 1978.23 The growth
of assisted reproductive technologies since then has been rapid. According to year
2000 data from the Centers for Disease Control and Prevention, 383 clinics re-
ported almost 100,000 assisted reproduction cycles (mostly IVF), resulting in 25,228
deliveries and 35,025 babies (there were many multiple births).24

Clinics began to freeze, or cryopreserve, embryos after Trounson reported the
first human pregnancy resulting from the transfer of a cryopreserved and thawed
embryo in 1983.25 Embryos are frozen for a number of reasons. The initial IVF
procedure for an infertile couple involves ovarian stimulation, an uncomfortable pro-
dure, and retrieval of eggs from the woman. Retrieval is generally performed by
transvaginal follicle aspiration, guided by a transvaginal ultrasound transducer. This
procedure requires light anesthesia.26 The eggs recovered are then fertilized, either

21Ibid., II. B. 4.
22Ibid., II. B. 6.
23Michael P. Steinkampf, Owen K. Davis, and Zev Rosenwaks, “Assisted Reproductive
Technology,” in Textbook of Reproductive Medicine, 2nd ed., ed. Bruce R. Carr and
24Centers for Disease Control and Prevention, 2000 Assisted Reproductive Technol-
25Alan Trounson and Linda Mohr, “Human Pregnancy following Cryopreservation,
Thawing and Transfer of an Eight-Cell Embryo,” Nature 305.5936 (October 20–26, 1983):
707–709.
26Leon Speroff, Robert H. Glass, and Nathan G. Kase, Clinical Gynecologic Endocri-
nology and Infertility (Baltimore: Lippincott Williams and Wilkins, 1999), 1137.
by incubating them with approximately 150,000 sperm derived from processed semen, or by a single sperm injected by the process of intracytoplasmic sperm injection (ICSI).\textsuperscript{27} Anywhere from three to five or more embryos are transferred to the woman’s uterus using a sterile plastic eighteen- to twenty-gauge catheter. The more embryos that are transferred, the greater the chance of achieving pregnancy; but also, the greater the chance of multiple pregnancy, with its potential complications.\textsuperscript{28} Therefore, “spare” embryos are frozen. This “allows insemination of all recovered oocytes, thus maximizing the chance of transferring an optimal number of viable embryos.”\textsuperscript{29} The use of these frozen embryos in future “cycles” of fertility treatment allows the couple to avoid the discomfort, time, and expense of repeating ovarian stimulation, harvesting, and artificial insemination.

Referring to embryo “freezing” is somewhat misleading. Actually the embryos are slowly cooled, and cryoprotectants, chemical agents such as DMSO (dimethyl sulfoxide) or glycerol used to replace cellular water, are used to minimize embryo damage caused by intracellular ice crystal formation during freezing and thawing.\textsuperscript{30} Hence, the embryos are both desiccated and frozen. The embryos are then stored in liquid nitrogen at -196 degrees Celsius. When embryos are thawed for transfer this whole process must be reversed. Only 60 to 70 percent of cryopreserved embryos survive thawing.\textsuperscript{31} Many embryos that survive, however, are injured through the thawing process; only 30 to 35 percent of thawed embryos survive with all cells viable.\textsuperscript{32} Transfer of frozen embryos can be performed either during a natural menstrual cycle, with monitoring of LH (luteinizing hormone) hormone levels, or with hormonal manipulation with GnRH (gonadotropin-releasing hormone) agonist, estrogen, and progesterone.

Frozen embryos, even if every attempt is made to bring them to term, face a precarious fate. According to CDC data, the live birth rate for frozen embryos is considerably lower than that for “fresh” IVF embryos, 19.5 percent “per thaw” for the former and 31.6 percent for the latter.\textsuperscript{33} It must be remembered, however, that the chance of survival for a given embryo is much lower than this, because several embryos are transferred “per thaw” and some embryos are discarded as “low qual-

\textsuperscript{27}Steinkampf et al., “Assisted Reproductive Technology,” 668–670.
\textsuperscript{29}Ibid., 673.
\textsuperscript{30}Ibid.
\textsuperscript{31}Ibid., 674.
\textsuperscript{32}Genetics and IVF Institute, “Human Embryo Cryopreservation (Embryo Freezing) and Frozen Embryo Transfer Cycles,” http://www.givf.com/embryov.cfm.
\textsuperscript{33}Centers for Disease Control and Prevention, \textit{2000 Assisted Reproductive Technology Success Rates}, section 3, http://www.cdc.gov/reproductivehealth/ART00/sect3_fig32-33.htm#Figure\%2032.
ty.” If one assumes that five embryos are involved in a “thaw,” one would divide the 19.5 percent live birth rate by five, giving a 3.9 percent chance of live birth for any given cryopreserved embryo involved in a thaw and transfer attempt. Tonti-Filippini, using Australian data, estimates that the actual overall survival rate of embryos produced by IVF is less than two percent, and of those transferred to a woman’s uterus, it is less than four percent.34 Another barrier to “rescuing” embryos is the fact that many of the couples relinquishing frozen embryos do not consent to their “adoption.” One Australian university clinic with a program to actively encourage “embryo donation” found that of 1,246 couples relinquishing frozen embryos, 89.5 percent opted to discard rather than donate their embryos.35

Many commentators on the subject of “embryo adoption” speak of adopting “an embryo.” It should be kept in mind that things are not so simple. Of the many embryos in cryogenic storage, HET will be attempted in only a small percentage. Even with attempted transfer to a woman’s uterus, most of these embryos will die. These considerations should be kept in mind, since chance of success, in this case of rescuing abandoned embryos, is a morally relevant consideration.

Is HET Implicitly Condemned by *Donum Vitae*?

Msgr. William Smith, writing in the *Homiletic and Pastoral Review*, addresses the question: Is it licit for a woman to volunteer her womb in an attempted rescue of a frozen embryo?36 Smith proceeds to quote *DV*: “In consequence of the fact that they have been produced *in vitro*, those embryos which are not transferred into the body of the mother and are called ‘spare’ are exposed to an absurd fate (*sorti absurdae obnoxii permanent*), with no possibility of their being offered safe means of survival which *can be licitly pursued*” (emphasis added by Smith).37 Smith continues: “No safe means that *can be licitly pursued*! Perhaps, the CDF did not intend to address this precise case, but I read here a first principled insight indicating that this volunteer ‘rescue’ is *not* a licit option.”38 Germain Grisez and William May, defending HET under some circumstances, both point out that the section of *DV* to which Smith refers is concerned with using embryos produced in vitro as subjects of experimental research.39 Grisez concludes, “the sentence Smith quotes should not be understood as referring to the action of the rescuer who has in no way partici-

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38 Smith, “Rescue,” 72.

panied in the wrongs that have brought the embryonic persons to be and left them to their absurd fate, but to the options available to those wrongly involved in IVF.\(^{40}\) The implication here is that the Congregation’s reference to “no possibility of their being offered safe means of survival which can be licitly pursued” refers somehow to the researchers who are wrongfully involved in embryonic research. The problem with this interpretation is that embryonic research generally (and certainly in 1987) involves destruction of embryos, not offering them “safe means of survival.” This sentence must refer to whether some woman can receive the embryo into her womb or not.

Geoffrey Surtees similarly argues that “for those who choose the methods of in vitro fertilization, it is in fact true that there are no licit means of handling the ‘spares’ begotten from the IVF procedure; this is because any action the parties choose to adopt with respect to the ‘spares’ would be to deny the fundamental rights of the embryo(s) to enjoy gestation and birth in his natural mother; and, after birth, to be raised and educated by the same.”\(^{41}\) On the other hand, Surtees argues, a couple not involved in IVF may licitly adopt these abandoned embryos through HET. There is a significant problem with this way of addressing the DV passage. “Those who chose the methods of in vitro fertilization” would clearly include the infertile couple seeking IVF as treatment for their fertility. Applying Surtees’ approach would mean that a married couple who underwent fertility treatment and has several embryos in storage may not have the embryos transferred into the wife’s womb (homologous embryo transfer), while a stranger may become impregnated with the same embryos (heterologous embryo transfer). At the very least, this seems counterintuitive: any woman may licitly become pregnant with the abandoned embryos except their own mother. This interpretation would also appear to contradict the fundamental right of the embryo (cited by Surtees in the next sentence) “to enjoy gestation and birth in his natural mother, and after birth, to be raised and educated by the same.”

It is not completely clear what the CDF had in mind in this section of DV. Smith admits that “perhaps the CDF did not intend to address this precise case [HET],”\(^{42}\) and that the CDF did not mean “to establish some universal negative precept”\(^{43}\) but states that he “read[s] here a first principled insight that this volunteer ‘rescue’ is not a licit option.”\(^{44}\) Smith’s interpretation appears reasonable. Another way of stating the point is this: Proponents of HET appear to assume that all of the moral wrong of IVF is in the fertilization, and that the subsequent procedure, embryo transfer, is morally innocuous. At the very least, it is not clear that the Congregation regards embryo transfer as morally insignificant.

\(^{40}\)Grisez, Way of the Lord Jesus, vol. 3, 242, note 188.


\(^{42}\)Smith, “Rescue,” 72.


\(^{44}\)Smith, “Rescue,” 72 (original emphasis).
HET as Surrogacy

The Congregation for the Doctrine of the Faith unequivocally condemns surrogacy in *Donum vitae*: “it is contrary to the unity of marriage and to the dignity of the procreation of the human person.”\(^45\) The CDF defines a surrogate mother as a woman who carries in pregnancy an embryo implanted in her uterus, who is either a genetic stranger to the embryo or the mother of the embryo, but the father is not her husband. In either case the CDF includes in the definition the consideration that the woman “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.”\(^46\) Surrogacy is condemned because it “represents an objective failure to meet the obligations of maternal love, of conjugal fidelity and of responsible motherhood; it offends the dignity and the right of the child to be conceived, carried in the womb, brought into the world and brought up by his own parents; it sets up, to the detriment of families, a division between the physical, psychological and moral elements which constitute those families.”\(^47\)

The question arises whether HET is surrogacy. The married woman who chooses to become pregnant by HET remains “genetically a stranger to the embryo,” although she does not “pledge to surrender the baby once it is born.” In a very practical sense, though, HET is surrogacy. The word surrogate is derived from the Latin *surrogare*, which means “to choose in the place of another.”\(^48\) Dictionaries define surrogate as “something that serves as a substitute,” or simply “substitute.”\(^49\) A woman who becomes pregnant by HET, then, is a surrogate in the popular sense of the word, in that she “serves as a substitute” for the genetic mother.

Grisez emphasizes the point that HET does not meet *DV*’s precise definition of surrogacy: “bearing [a child] on another’s behalf is part of the very definition of surrogacy.”\(^50\) The question remains, however, whether HET is morally licit. Smith argues that it is not: “surely pledged surrender is not the only objection to surrogacy—and surrogacy is what is going on here.”\(^51\) While acknowledging that HET does not precisely fit the Congregation’s definition of surrogacy, Smith writes, “But it seems to me that the foundational reasons for rejecting ‘surrogacy’ as licit also apply to this project—a failure to meet the obligations of maternal love, conjugal

\(^{45}\)Congregation for the Doctrine of the Faith, *Donum vitae*, II. A. 3.

\(^{46}\)Ibid.

\(^{47}\)Ibid.

\(^{48}\)Webster’s New Collegiate Dictionary (Springfield, MA: Merriam, 1975), 1173.

\(^{49}\)Webster’s New Collegiate Dictionary, 1173; Webster’s II New Riverside University Dictionary (Boston: Houghton Mifflin Company, 1984), 693.

\(^{50}\)Grisez, *Way of the Lord Jesus*, vol. 3, 241, note 186 (original emphasis). Ironically, Grisez emphasizes this point, but at the same time argues that an unmarried woman may morally “rescue” an embryo with the intent of giving him up for adoption after birth. Tonti-Filippini argues that this would meet the CDF’s literal definition of surrogacy. Tonti-Filippini, “The Embryo Rescue Debate,” 125.

\(^{51}\)Smith, “Response,” 17 (original emphasis).
fidelity and responsible motherhood; and the facts offend the dignity and right of the child to be conceived, carried in the womb, brought into the world and brought up by his own parents, setting up to the detriment of families, a division between the physical, psychological and moral elements which constitute families.”52 Moreover, Smith argues, “Donum vitae proposes a principled conclusion that pertains, I think, to this question: ‘the moral relevance of the link between the meanings of the conjugal act and between the goods of marriage, as well as the unity of the human being and the dignity of his origin, demand that the procreation of a human person be brought about as the fruit of the conjugal act specific to the love between spouses’ (DV, II. 4) which this project is not.”53

One might indeed question whether the “pledged surrender” piece of the Congregation’s definition is the most important part of the definition. Certainly there is something morally wrong with the contract between the surrogate mother and the couple seeking to adopt her baby. Exploitation of the woman and the child has been a concern of secular as well as religious writers. On the other hand, in some cases “surrender” of a child after birth to a loving adoptive couple might be the most prudent and loving thing for an unwed mother, both for herself and for her child. Indeed, Grisez appears to approve of this course of action in his reply to a single woman who asked whether she could licitly “rescue” her deceased sister’s embryos and then give them up for adoption.54 If the plan to “surrender” the baby is not intrinsically wrong, does all of the moral wrong of surrogacy lie in the monetary arrangements that are usually part of the surrogacy contract? I will argue, as does Smith, that this is not the case.

Others have argued that the offense against the good of marriage and the rights of the child has already been committed by those wrongfully involved in IVF, and that the woman proposing to undergo HET is performing the morally commendable act of “adoption” or “rescue.” Central to the debate is clarifying what is being chosen by the woman seeking HET. May writes, “human acts, as John Paul II reminds us in no. 78 of Veritatis splendor, receive their primary moral specification from the ‘object’ freely chosen by the acting person.”55 Those writing on this topic have taken very different positions on the issue of what is the moral object of HET.

Surtees, in his response to Smith in Homiletic and Pastoral Review, proposes that the moral object of the couples seeking HET is adoption. He writes, “The couple wishing ‘to rescue and adopt this unborn and raise the child’ is not seeking an artificial substitute for the conjugal act and its fruitfulness for the simple reason that the child is already alive within the human community. We are, therefore, dealing with a question of adoption, not of procreation or artificial reproduction.”56 He dis-

53Smith, “Rescue,” 74.
55May, Catholic Bioethics, 99.
tlinguishes between the couple seeking IVF and the couple seeking HET: “the IVF couple [is] seeking to produce a child through means of technology, while the adopting couple is rescuing and adopting one through the means of technology.” Surtees points out that HET was “never condemned by the magisterium of the Church.” This analysis of HET as adoption focuses heavily on the motives of the couple seeking HET: to rescue the embryo. No one in this debate, however, denies that the motive of saving embryos is a good one. Surtees’ analysis, however, begs the question because it ignores the means by which this rescue is to be accomplished. Implicit in Surtees’ argument is that HET is good or at least morally neutral, but this is precisely the issue. Also his repeated use of the singular noun “embryo” should be noted. In fact, fertility specialists aiming to impregnate a woman in this manner would almost definitely transfer several embryos in the hope that one of them might survive. Surtees’ analysis would require us to say that the couple is “adopting” three or four embryos on the day of the HET procedure.

Grisez believes that Surtees is incorrect in identifying adoption as the object of the HET couple’s act. He argues, “However, even if a couple wishing to adopt a frozen, embryonic child were in question, their necessary means would be to have the embryo transferred from the freezer to the wife’s womb, and their plan to adopt, pertaining to the act’s end, would lie outside its precise object.” Grisez more clearly distinguishes the means (HET) from the end for which the couple undertakes HET (adoption). Grisez recognizes that “embryo transfer usually is an integral part of the project of obtaining a baby by means of IVF, and that project as a whole is immoral.” HET is “superficially similar to acts violating various goods involved in marriage and procreation” but “not the same as any of them.” The woman seeking HET is “committing [herself] to only one thing: trying to save [the embryo’s] life.” Hence Grisez does not believe that the object of HET is surrogacy.

May agrees that Surtees’ argument “needs to be clarified and strengthened” and suggests that “one moral object chosen by a married couple is, as Surtees maintains, to adopt a frozen embryo, a child ‘orphaned’ before birth.” This choice, however, “commits” them to further choices including the “central choice” to “rescue the frozen embryo by having it transferred from the freezer to the wife’s

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57Surtees, “Adoption,” 12 (original emphasis).
59One embryo donation program used an average of 3.6 frozen embryos per cycle. The “ongoing” pregnancy rate was 47.6 percent. See Steven R. Lindheim and Mark V. Sauer, “Embryo Donation: A Programmed Approach,” Fertility and Sterility 72.5 (November 1999): 940–941.
61Ibid., 242.
62Ibid.
63Ibid.
64May, Catholic Bioethics, 104 (original emphasis).
womb.” Further, the wife chooses “to give the frozen embryo its first home within her womb by having the frozen embryo transferred into her womb.” For May, then, the moral object of HET (at least for the married couple intending to keep the child after birth) is twofold: “first the choice to adopt and then, in serving the good to which the choice of adoption has committed them ... the choice to give their adopted child a home, first within the womb of the wife.” It appears that May and Grisez come closer than Surtees to identifying the morally relevant choice (having embryos transferred into the woman’s uterus), but still largely assume that this act is in itself good or morally neutral.

W. Smith, as noted above, believes that the object of HET is indeed surrogate. Smith, responding to Surtees, believes that defenders of HET confuse the end (adoption) with the means:

I think we have here some over-reach, even a transfer, of the finis operis (what the couple does morally) with the finis operantis (the motive ["adoption"] that the same couple has in mind). What they first do morally (finis operis) is have the wife become a nine-month surrogate in order to adopt (finis operantis) the child upon birth.

Smith adds that he does not question “the goodness of that generous goal and intention,” but rather “the chosen means to that good end.”

Is Smith correct when he argues that “surely pledged surrender [of the baby] is not the only objection to surrogacy”? It is worth reexamining what it is that the CDF finds objectionable about surrogacy. DV states that surrogacy: 1) represents a failure to meet the obligations of maternal love, conjugal fidelity, and responsible motherhood; 2) offends the dignity and the right of the child to be conceived, carried in the womb, and brought up by his own parents; and 3) sets up, to the detriment of families, a division between the physical, psychological, and moral elements which constitute families. The woman seeking HET with the intention of adopting the child after birth would not be failing “to meet the obligations of maternal love.” (The issue of whether HET represents an offense against conjugal fidelity will be addressed below.) Certainly the child brought to term by a woman impregnated by HET would not be “conceived, carried in the womb, and brought up by his own

65Ibid. (original emphasis).
66Ibid. (original emphasis).
69Ibid.
70Ibid.
71Congregation for the Doctrine of the Faith, Donum vitae, n. II. A. 3.
parents.” In this sense the woman impregnated by HET would appear to be a surrogate. Likewise, impregnation by HET would appear to create a division between the physical, psychological, and moral elements that constitute families. It appears that HET with the intent of adoption does represent a form of surrogacy, the main difference being the generous intent of the would-be adoptive parents as opposed to the financially motivated intent of the surrogate mother who contracts to hand over her baby to another after birth. This appears to be an inadequate reason to call one form of HET intrinsically evil and the other good. Applying DV’s principles regarding surrogacy might rule out “adoptive” HET as well.

### HET as an Infidelity to Marriage

Nicholas Tonti-Filippini, a philosopher at the University of Melbourne, Australia, points out that reproductive technologies are immoral not only because they separate “the unitive from the procreative,” but also because they bring about “the dislocation of the generative continuum from fertilization and embryo formation to implantation to embryonic and then fetal development.”72 This is an improper attempt by man at what Pope Paul VI called “dominion over his generative faculties … because of their intrinsic ordination towards raising up life, of which God is the principle.”73 Tonti-Filippini believes that characterizing HET as “prenatal adoption” is “implicitly dualistic in its oversimplification.”74 It is dualistic, he argues, “because it implies an equivalence between the impregnation of a woman’s body and her admitting a child into her home to be cared for as her child,” among other reasons. There is a vast difference, he argues “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.”75

Tonti-Filippini argues that most of the prominent commentators on HET have paid inadequate attention to the possibility that HET might be an infidelity to marriage. He quotes DV: “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.”76 He recognizes that in the context of DV, this statement referred to heterologous fertilization.77 Nevertheless, the question remains “whether heterologous embryo transfer by which a woman is impregnated with an abandoned embryo is an act that conflicts with the exclusive gift a woman makes of herself in marriage” and, if so, “ought not be condoned as a means of a married woman becoming a gestational and nurturing parent even for the purpose of rescuing frozen embryos abandoned by their genetic parents.”78 He asks, “Is the capacity to become im-

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72Tonti-Filippini, “The Embryo Rescue Debate,” 120.
73Pope Paul VI, Humanae vitae, n. 13.
74Tonti-Filippini, “The Embryo Rescue Debate,” 119.
75Ibid.
76Ibid., 114; Congregation for the Doctrine of the Faith, Donum vitae, II. A. 1.
77Tonti-Filippini, “The Embryo Rescue Debate,” 114.
78Ibid., 116.
Tonti-Filippini emphasizes that becoming pregnant by HET is not the equivalent of providing life support, just as abortion is not the equivalent of removing life support. Becoming pregnant involves an ontological change by which the woman becomes the mother of the child. Abortion, then, “is the severance of a relationship that is not replaceable. It is a casting aside of the unique and intimate union that has formed between mother and child at a time when that union is one of essential dependency. The obligation to continue a pregnancy is founded upon the fact that a mother who is with child is in a different state of being which is inclusive of the child.”

Likewise, becoming pregnant by HET is not morally equivalent to wet-nursing: “Breastfeeding is a motherly thing to do, but it is not constitutive of a motherhood relationship.” From the nature of this union, from this ontological change which takes place as a woman becomes pregnant, Tonti-Filippini concludes 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 [HET], however altruistic the purpose and however desperate the plight of those to whom she wishes to give herself.”

Moreover, with HET, the woman’s husband is in no way involved in her becoming pregnant; she is impregnated by a clinician: “The profound notion of marital communion, of the two in one flesh and the having of children through this ‘two in one flesh,’ is broken by the intimate use of the woman’s body who is impregnated (and bears a pregnancy) in a way which isolates her husband, which excludes him from this part of her life.” HET would represent infidelity to the exclusivity that is part of the marriage covenant. It also appears to violate a principle enunciated by DV: “the reciprocal respect of [the spouses’] right to become a father and a mother only through each other.”

It follows, then that Surtees’ argument that with HET the woman makes a “home” available to the embryo is defective; the woman is not a “home” or life support for the embryo. Rather, in becoming pregnant, she forms a unique ontological union with the embryo. This union, Tonti-Filippini would argue, is properly reserved to marriage. Similarly, Tonti-Filippini argues that Grisez is incorrect in characterizing the object of the act of HET as being “to have the embryo moved from

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79Ibid., 121.
80Ibid., 122.
81Ibid.
82Ibid., 124.
83Ibid.
84Ibid., 128.
85Congregation for the Doctrine of the Faith, Donum vitae, II. A. 1.
the freezer into [the] womb and to nurture him or her there.” Becoming pregnant is a much more profound reality than transferring embryos and “nurturing”: “The actuality of being impregnated is the formation of a new and unique union with the child and, as such, an ontological change to the woman in which she becomes the child’s mother.” By de-emphasizing this profound reality and ignoring the isolation of the husband from his wife’s impregnation, Surtees and Grisez erroneously conclude that HET is a matter of mere “adoption” or “nurturing.” While neither DV nor recent papal encyclicals give us precise guidance on HET, this reproductive technology shares important characteristics with other technologies that have been condemned as intrinsically evil.

### HET as an Unchaste Act

Mary Geach, an English philosopher and mother, argues that HET, which she refers to as “technological impregnation,” is an *unchaste* act. Geach points out that chastity is not “simply a matter of temperance, and the regulation of sexual passion.” Reproductive integrity, she argues, is the “profounder element” of chastity. Geach writes, “The marriage act is, in this field, the central one to be considered … the impermissible act is the one that distorts or replaces some aspect of the marriage act, leaving out the central core of self-giving to the other through an act of generative kind.” The principle of reproductive integrity includes “the principle that the unitive and the procreative aspects of the marriage act are inseparable.” However, she says that this principle “does not cover the whole field.” As an example, Geach gives the case of “solitary vice” (masturbation), which is “neither unitive nor procreative in kind, but involves a use of something usually connected with the marriage act. . . . using one part of the marriage act out of context.” It is similar with HET:

Thus it is the marriage act as a whole which should not be dismembered, and the principle about not separating the unitive and the procreative, on the ground of their joint significance, is only part of this more general principle. But, as I have

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87Tonti-Filippini, “The Embryo Rescue Debate,” 125.


89Ibid., 344.

90Ibid.

91Ibid.

92Ibid.

93Ibid., 344–345.
said, the fact that one is laying oneself open to an impregnating intromission is a vital part of the self-giving involved in the woman’s part of the marriage act.94 This self-giving is not only to the possible child, but also to the father, “since it would be his child that she would be bearing.”95

Geach argues that if it is wrong to excite the sensations associated with the marriage act through “solitary vice,” “how much worse must it be to isolate the spiritual component of the marriage act, the giving up of the body to the impregnator, dissociating oneself from the parents of the child, and substituting for the relation to the father a mere arrangement with a technician.”96 HET proponents are asking women “that they take a vital part of the marriage act, and perform it without the father.”97 Geach concludes that to subject oneself to HET, “which is not performed by the father, and is not generative, and is not expressive of a pre-existing sexually exclusive personal relationship, would be seriously to damage one’s ability to give oneself in marriage, and one’s sense of oneself as a psychophysical unity, and one’s understanding of the human animal as an image of the Creator.”98

Geach notes that the fact that “the only way to save certain people is morally impermissible should not be regarded as surprising.”99 Society is reaping what it has sowed in accepting artificial reproductive technologies: “Death is what follows the assault on marriage that is involved in unchastity, and death doubled and redoubled has followed that involved in IVF.”100 No good can come of women “assail[ing] their own reproductive integrity” through HET for “death will follow as it always does when men destroy the sense of human dignity.”101

Helen Watt, of the Linacre Centre in London, wrote a response to Geach’s argument against “technological impregnation.” Watt, defending HET, “albeit with some uncertainty,” takes a somewhat different approach than that of Grisez, Surtees, and May discussed above.102 Watt appears to recognize the ontological significance of pregnancy, acknowledging, “Pregnancy is not just another way of nurturing a child, like breastfeeding a baby. Being a wet-nurse does not make someone a mother, and has never been seen as morally wrong in itself.”103 Watt argues, however, that

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94Ibid., 345.
95Ibid.
96Ibid.
97Ibid.
98Ibid.
99Ibid.
100Ibid., 346.
101Ibid.
103Ibid., 151.
Geach fails to adequately distinguish the ways in which a woman can allow herself to become pregnant. Watt writes, “Quite different from the intention to have a child come to be inside one’s body is the intention to have a child put inside one’s body.”104 As support for this statement she asserts,

> While the embryo’s creation within the mother’s body is, indeed, caused, at least partly, by intercourse, any subsequent positioning of the embryo, and any actual implantation of the embryo, is brought about by other ways. For the embryo to travel down the fallopian tube and implant in the womb, it needs nothing further from its father, but simply the assistance of its mother ... It is the mother and embryo, not the father and mother, who cause the embryo to implant.105

Watt goes on to ask whether “intercourse must always precede uterine pregnancy”: “What I want to argue is that whereas ideally intercourse should precede uterine pregnancy, the only absolute moral requirement is that intercourse precede—and indeed directly cause—in vivo conception.”106

Watt appears to be arguing that with normal intercourse the woman’s husband does not make her pregnant. Rather, the husband is involved in the conception of the child; pregnancy only happens when, a few days later, the embryonic child moves down the fallopian tube and implants in the uterus. Therefore, becoming pregnant with another’s embryo is morally licit, because in marital intercourse the husband was involved only in the conception, not the pregnancy. It is all right, then, to become a gestational mother, through “non-sexual means,” just as a woman who adopts after birth becomes a social mother through “non-sexual means.”107

There are a number of problems with this analysis. First, to argue that the husband and father is responsible for conception and not pregnancy appears to be a reductionistic view of the paternal role. This view appears to minimize the role of the husband and father in the co-creation of new life. Second, when the woman’s egg is fertilized after marital relations, she becomes a mother; she is pregnant. Implantation is, of course, a vital step in the normal development of the embryo. Nevertheless, she is pregnant when conception occurs. When a technician inserts an embryo (or three or four) into her uterus, she likewise becomes pregnant, she becomes a mother. Even if one accepts Watt’s assertion that “it is the mother and the embryo, not the father and mother, who cause the embryo to implant,”108 Watt has not shown how the intimate relationship between the mother and the father can be licitly replaced by the mother and the technician. Watt ultimately fails to refute Geach’s charge that “technological impregnation” is unchaste and therefore morally illicit.

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105 Ibid.

106 Ibid., 349–350 (original emphasis).

107 Ibid., 351.

108 Ibid., 349.
HET: Cooperation, Scandal, and Prudence

Even if HET were not intrinsically evil, there would still be serious questions about whether it ought to be undertaken. One such question might be whether a couple’s involvement with the IVF clinic might involve inappropriate cooperation with the clinic’s morally illicit deeds. This is not necessarily the case. Purchasing services from a person or business that also performs morally evil practices does not necessarily implicate the purchaser in those practices. Suppose a woman needed an emergency caesarian section in a small town where the only obstetrician available also performed abortions. Under normal circumstances the woman might not want to have anything to do with this individual. Nevertheless, if she accepted his services (the C-section), she would at worst be involved in remote or mediate material cooperation, and even this only in the sense that by purchasing the doctor’s services she contributes to the cash flow of his practice and in a small way helps him to continue in his immoral business. Therefore, for the morally compelling goal of saving her and her baby’s life, she may accept the obstetrician’s services. In the case of HET, Grisez argues that the artificially impregnated mother would not be cooperating with the IVF clinic operators “who regard babies as a product,” but rather the clinic operators “would be cooperating with [her] in dealing with the embryo as a baby rather than as a product, and nothing [the mother] did would contribute to any of their other, wrongful acts.”109 As Mary Jo Iozzio points out, the HET couple would not be guilty of illicit cooperation with the IVF clinic unless the couple had contracted to have the embryos created.110

Unfortunately, the situation with HET is more complicated. Once a couple enters the IVF clinic seeking to “rescue” embryos through HET, the couple will very likely be doing things on the clinic’s terms. The IVF literature consistently refers to the transfer of three to five “high quality” embryos to the recipient.111 At the same time, transfer of a greater number of embryos is viewed as clinically inappropriate because of the high risk of incurring the complications of multiparity. So what happens to embryos that are of “low quality” or embryos that are not transferred for some other reason? For example, suppose the HET couple contracts for the HET procedure, including the thawing of, say, seven embryos. Three are transferred into the “adoptive” mother. What happens to the rest of the embryos? The couple cannot “wash their hands” of moral responsibility for the four non-transferred embryos. Technically, these can be desiccated and frozen again, with further risk to the embryos; will the “adoptive” couple then be responsible for the fact that the embryos reside in “concentration cans”? Then there is the possibility that the clinic would not acquiesce to the re-freezing or transfer of embryos that it views as low quality. Allowing the thawed and rehydrated embryos to die naturally


111Steinkampf, et al., “Assisted Reproductive Technology,” 672. See also Speroff et al., Clinical Gynecologic Endocrinology and Infertility, 1139.
would appear to be a morally viable option; cryopreservation might be considered extraordinary and overly burdensome treatment and therefore might be discontinued.112 The IVF clinic, however, might insist that these four “spare” embryos not be wasted, and that they be donated to research. The couple might, of course, refuse to receive HET from a clinic that insisted on such terms. The point is that HET would involve working closely with IVF clinics that daily engage in numerous immoral practices. The clinic is likely to offer the couple numerous opportunities for illicit cooperation.

Another consideration is the fact that many IVF clinic directors would restrict fertility services if there were a risk of genetic disease in the offspring.113 Suppose the IVF clinic screened a large number of embryos on behalf of the would-be adoptive couple, and marked some of them for destruction on the basis of “poor quality” or presence of possible genetic disease. To the extent that the couple paid for the clinic’s services, the couple would be involved in material cooperation with the clinic. If the couple requested or approved of such screening, the couple would be guilty of formal cooperation with the clinic’s deeds. All the while we should remember that “we are debating whether a woman should become involved with such a program in order to achieve a very small chance of saving the life of the embryo.”114

Even if HET were not intrinsically immoral and did not involve illicit cooperation with the IVF clinic, there remains the issue of whether the Christian couple involved in HET would be giving scandal. Mary Geach quips that if “technological impregnation” is morally licit, “then we have a nice Catholic reproductive technology.”115 Tonti-Filippini worries that acceptance of HET might “provide something of a public justification for the profligate way in which the lives of human embryos are treated in being overproduced in IVF programs, and the offenses against human dignity inherent to their being produced outside of the sacred context of the marital act and outside the woman’s body.”116 Watt shares similar concerns, and adds that there is the danger of creating the impression “that there were couples available to take all future ‘spare’ embryos.”117 Watt believes that the HET couple can counter these impressions by “explain[ing] their position very clearly both to their friends and family and to the IVF practitioner” and that “they might be more convincing if they were not infertile themselves, but already had children of their own.”118

113 According to one survey, 59.1 percent of IVF clinic directors would personally restrict clinic services in this case. Judy E. Stern et al., “Attitudes on Access to Services at Assisted Reproductive Technology Clinics: Comparisons with Clinic Policy,” *Fertility and Sterility* 77.3 (March 2002): 539.
114 Tonti-Filippini, “The Embryo Rescue Debate,” 117. Tonti-Filippini calculates the chance of saving a given embryo as less than 2 percent.
115 Geach, “Are There Any Circumstances,” 342.
118 Ibid.
ertheless, widespread acceptance and use of HET would result in large numbers of Christian couples going to IVF clinics for their technological fertility services. Imagine if Christian women went to Planned Parenthood clinics for their routine gynecologic care. It is easy to see that there is some concern for scandal.

Finally, even if HET were not to involve intrinsic immorality, illicit cooperation, or scandal, it still might not be prudent for Christians to embrace this technology. The Italian theologian Maurizio P. Faggioni, in a 1996 article in *L’Osservatore Romano*, while not condemning HET as intrinsically immoral, worried about the possible bad consequences of HET paving the way for business enterprises producing embryos *in vitro* for “adoption” by infertile couples. It is obvious that once HET is accepted and widespread, IVF clinics will very quickly move from facilitating adoption of abandoned embryos to creating designer embryos to order from “donor” eggs and sperm, just as they now traffic in the sperm and eggs individually. One can readily imagine the advertisements: “Want a baby whose mom is a blonde violinist and whose dad is a Harvard Law School student? No problem.” A quick IVF procedure, and the clinic will supply the made-to-order embryos. Already an Internet search of “embryo adoption” quickly turns up sites such as “Surrogacy.com,” “Everythingsurrogacy.com,” “Childbirthsolutions.com,” and “Creatingfamilies.com.” For-profit IVF clinics that already perform procedures such as heterologous artificial insemination, heterologous IVF, and surrogate pregnancies will likely have no qualms about moving from HET with abandoned embryos to HET with made-to-order embryos.

One might even have concerns about the propriety of not-for profit “embryo adoption” organizations such as Snowflakes, a program run by Nightlight Christian Adoptions in Fullerton, California. As JoAnn Davidson, director of the Snowflakes program reports, the embryos that Snowflakes places for “adoption” are not truly abandoned. Instead, the abandoning couple is allowed to dictate the religion, occupational status of the adopting mother, length of marriage, income, educational background, number of other children, ethnicity, and age of the would-be adoptive couple. In a “successful adoption” described by Davidson, the adoptive couple did not meet all of the abandoning couple’s criteria, but, the reader is assured, “they were willing to negotiate.” Ultimately, of nine frozen embryos, four were deemed to be of “good quality” and transferred. One survived. In another “successful” Snowflakes adoption, the genetic mother stated that giving up her embryos “weighed on [her] heart” and that she would consider a court battle were it not for her own experience of a failed adoption. She added, “It’s probably just a matter of time

before that [litigation over adopted embryo babies] happens.”\textsuperscript{123} In the same article, Monsignor William B. Smith is quoted: “A barrier is broken. Now we are in a Never-Never Land, walking through the consequences. We should have never gone down this road.”\textsuperscript{124} Again, even if HET is not intrinsically evil, one might ask whether it is prudent to walk down this road.

**Advocates Unsuccessful**

Certainly the presence of 400,000 frozen and desiccated embryos residing in American IVF clinics is a moral abomination, and well-intentioned people naturally seek ways to rescue some of them. This paper asks the question whether HET might be a morally appropriate way to accomplish this. The charges that HET is a form of surrogacy, that it represents an infidelity to marriage, and that it is unchaste, have not been successfully refuted by HET advocates. Even if the case could be made that HET is not intrinsically evil, doubts about the prudence of approving of this procedure would linger. At this point the moral and practical concerns surrounding this practice do not appear to have been adequately answered.

\textsuperscript{123}Ibid.

\textsuperscript{124}Ibid.