What Is Chosen in the Act of Embryo Adoption?

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In the last twenty-five years, a problem has arisen which the manuals and treatises of the Catholic moral tradition could never have imagined: what to do about frozen embryos. How could anyone have thought that humans would create human embryos in a dish and then freeze them? In attempting to determine what to do about this problem, we will have to extend existing moral principles beyond their current applications.

In this paper I address briefly the grave injustice that has been and is continuing to be committed in the creation of human embryos outside of the marital embrace, as well as the further wrong involved in the entire in vitro fertilization (IVF) process, especially the creation and freezing of so-called “spare” embryos. Then I address what I take to be the crucial question: is the practice of heterologous embryo transfer (HET) morally wrong in and of itself? This is certainly not the only issue. What about scandal, by cooperation with IVF (which would make it seem like a permissible procedure)? What about the morality of cooperating with IVF clinics, which have a practice of keeping human embryos frozen in an anhydrous state? Both are important to address, but the moral status of HET is the most important, since problems of scandal or cooperation may be resolvable, but only if HET is not intrinsically wrong.

A Preliminary Note about Donum Vitae

At first glance, it appears that the Congregation for the Doctrine of the Faith (CDF) has already ruled out the possibility of embryo adoption. In the section of
Donum vitae (1987) which discusses research on so-called “spare” embryos, it says:

Every human being is to be respected for himself, and cannot be reduced in worth to a pure and simple instrument for the advantage of others. It is therefore not in conformity with the moral law deliberately to expose to death human embryos obtained in vitro. In consequence of the fact that they have been produced in vitro, those embryos which are not transferred into the body of the mother and are called “spare” are exposed to an absurd fate, with no possibility of their being offered safe means of survival which can be licitly pursued.¹

It seems that this passage is clear: there is no way that such embryos can be rescued in a morally legitimate way. That is the interpretation arrived at by Monsignor William Smith: “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.”²

There is some debate on whether this Donum vitae passage is intended to make a moral judgment on the people deciding to implant the embryo or on the actions of the researcher. Some take the passage as support for the position that embryo adoption is not licit because of the illicit means that must be used to bring the child to term. But it appears to others that Donum vitae cannot be read as necessarily ruling out the possibility of embryo adoption. In February 2004, the Pontifical Academy for Life put out a document that clarifies the language in Donum vitae. The statement about the absurd fate of embryos, which have no licit means of survival (Donum vitae I.5.), concerns those frozen embryos which are “rejected by those who have ordered them.”³ The superfluous embryos are in an absurd state because of the actions of those who have caused them to be created. This February 2004 document appears to imply that embryo adoption could perhaps at some point be permitted: “Every other reflection on this point, and in particular on the question of the (theoretical and real) possibility of a possible pre-natal adoption of these ‘spare’ embryos, would require a detailed analysis of scientific and statistical data on the subject, which in fact is still not available in the literature in the field.”⁴ Since such data is not available yet, no pronouncement has been made for or against embryo adoption. The question still seems to be open, at least by the Pontifical Academy for Life.

¹Congregation for the Doctrine of the Faith, Donum vitae (February 22, 1987), I.5. (original emphasis).
⁴Pontifical Academy for Life, Final Communiqué.
The Injustice of In Vitro Fertilization

The in vitro fertilization procedure has become so commonplace that one who opposes it these days risks being considered an eccentric or insensitive to the plight of the infertile. Reflection on the details of the procedure is worthwhile. First, we must remember that according to the Church, from conception onwards, there exists a new human being, however small. As such, it has all the dignity of any human.

With regard to the parents, the act of fertilization in vitro is intrinsically evil, since it separates procreation from the unitive marital act. (This is the opposite of the problem of contraception, which separates the marital act from procreation.) It is also bad from the point of view of the embryo. It deprives the child of the right to be conceived as the result of a self-giving act of love between husband and wife. Donum vitae says:

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 the spouses.5

Therefore, IVF would be wrong even if the embryo produced were guaranteed to be treated with respect. However, this respect is not routinely given during the usual IVF procedure. Because of the low success rate of implantation (which is reported variously, but ranges from 2 to 37 percent6), the standard procedure is to stimulate the woman to produce more than one oocyte, and then to fertilize them all, implanting a few at a time. The surplus embryos are frozen, either for future use, disposal, or use as subjects of experimentation.

Obviously, disposal and experimentation are impermissible, if the embryo is to be considered worthy of the moral consideration given any human being. What about future use? I discuss this further below. In any case, the freezing process itself is deeply problematic, since it is an affront to the dignity of the child. It is not as simple as the word “freezing” makes it sound; water must first be removed from the embryo and replaced with chemicals that will not crystallize at the temperature at which the embryos are stored. Not all embryos survive this process, and of those that are later implanted, one estimate claims that 96 percent die.7 The procedure is not one that a living human ought to be subjected to, and the risks seem intolerably high.

The Ethical Implications of the Rescue Procedure

Given that the abandoned frozen embryos have been created by immoral means, and are preserved and made use of in immoral ways, is there any sort of rescue that

5Congregation for the Doctrine of the Faith, Donum vitae, II.4.
can be attempted? There seem to be two issues involved: would such a rescue involve an illicit act of surrogacy, and would it be a violation of the integrity of marriage? In other words, is it intrinsically evil, regardless of how good the end result may be? A basic axiom of Catholic moral teaching is that one should not do evil so that good may come of it, no matter how great the good or how minor the evil (Romans 3:8). So if the transfer of an embryo into a woman who is not the mother is intrinsically evil, then no amount of good resulting from it will make it permissible.

What decides the good or evil of an action? St. Thomas Aquinas enumerates three elements that must be in order for an act to be good: object, circumstance, and end. The end is the reason that one performs the act, the circumstances are the factors surrounding the act, and the object is the species of the act itself. One may have a good end in embryo adoption (to give a child a chance for life), and the circumstances may be acceptable, but if the object itself (the moral character of the act of implanting the embryo) is bad, then the whole action is considered bad. The object is the issue we need to analyze in embryo adoption: is it an act which is good or evil in its nature?

The object of an act can be difficult to determine. In fact, it is quite often misunderstood that the object is some sort of physical characteristic of the act. This is the reason for the common belief that the Church prohibits contraception simply because it is “unnatural.” One might make the same objection to plane travel. Clearly, what the object of an act is does not necessarily pertain to how “natural” that act is. In the Summa Theologica, Aquinas asks whether the good or evil of a man’s action is derived from its object. In keeping with his custom, he first considers the objections. It seems not, he says, if we consider the object to be a thing, as something material. In reply, Aquinas describes the object thus: “The object is not the matter (a thing is made), but the matter about which (something is done); and stands in relation to the act as its form, as it were, through giving it its species.” The object is a formal element of the act, not a material element.

The object/end terminology can also cause misunderstanding, since both object and end are really objects of the will, or “ends.” The difference between object and end is the place of each within the totality of the act. There are two parts to the object of a voluntary action: the interior intention and the exterior intention. The interior intention is directed toward the further end, the reason why we do an action. The exterior intention is the action itself, which is characterized not by its physical characteristics, but by what we intend to do by the action. Aquinas further clarifies between the object and end of an action: “The end is properly the object of the interior act of the will: while the object of the external action, is that on which the action is brought to bear.” For example, if someone steals so that he may commit adultery, adultery is the end, and stealing is what he means to do (also called the


9Ibid., I–II, Q. 18.2, reply 2 (original emphasis).

10Ibid., I–II Q. 18.6, body.
object) to get to the end. Note that only the object needs to be bad for the whole act to be bad. Stealing in order to give to the poor would still be a wrong act.

The significance of this is that in order to figure out the rightness or wrongness of the object, one cannot look merely at a physical element of the action. The example Thomas often gives of a bad object is “to take what belongs to another.” The object is not the physical act of putting one’s hand in another’s pocket, but is rather the intention of taking the other’s wallet for oneself. One cannot determine the object of an act simply by looking at the physicality of an act. For example, we cannot determine that surgery is wrong because the surgeon is cutting someone’s flesh with a knife. We have to look at what one means to do by the action. Surely the physical nature of the act is important, since it is that which we choose to do in order to achieve the object. One should not part one’s hair with a shotgun, for example. But that is not wrong because of any problem with shotguns; the problem is rather with the choice of the shotgun to achieve this end. It may do the job, but the act will probably cause harm. We must look beyond the physical order. John Paul II, in *Veritatis splendor*, says,

> By the object of a given moral act … one cannot mean a process or an event of the merely physical order, to be assessed on the basis of its ability to bring about a given state of affairs in the outside world. Rather, that object is the proximate end of a deliberate decision, which determines the act of willing on the part of the acting person.\(^{11}\)

One must consider what one intends to do and if that intention accords with the dignity of the entire human person.

### What Is the Object in Embryo Implantation?

Those who object to embryo implantation usually argue that the object is immoral. William Smith argues that although the end of embryo adoption is good, the means to obtain it is immoral, since it requires “the complete separation of the unitive and procreative dimensions of the conjugal act and the goods of marriage.”\(^{12}\) It would indeed be wrong to will an act that separated the unitive and procreative ends of the conjugal act. But in this case, as Surtees argues, “This project of rescuing frozen embryos through adoption is not about a perversion or abuse of the conjugal act because this project has *nothing to do with the conjugal act*. The conjugal act, or rather the perversion thereof, has already taken place.”\(^{13}\) Mary Geach also argues against embryo adoption for similar reasons. She says that if, in the act of masturbation, it is wrong to separate the pleasures of the sexual act from the dimension of giving life, “How much worse must it be [with embryo transfer] 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

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\(^{11}\)John Paul II, *Veritatis splendor* (August 6, 1993), n. 78.

\(^{12}\)Smith, “Questions Answered,” 74.

the father a mere arrangement with a technician.”14 But, as William May argues, this is not what one is intending to do. The woman who adopts the embryo is not intending the dissociation of the components of the marital act, since the perversion of the marital act has already happened in the laboratory. “The object is … the transferring of the frozen embryo to her womb.”15 I have already indicated that the act of creating the embryo in vitro is itself wrong. Embryo adoption is an attempt to rectify this injustice after it has happened. Whatever the problem with embryo implantation, it is not a defect of the conjugal act.

Tonti-Filippini has argued recently that HET is intrinsically wrong. His arguments deserve consideration, since he brings in a new element. He holds that the act of implantation is a violation of the goods of marriage, but not because of the artifice of the person who performs the implantation. Rather, it is wrong because a woman ought not to become pregnant by a man who is not her husband. Tonti-Filippini discusses “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.”16 He concludes that it is such an act. He argues further that not only must the unitive and procreative aspects of the sexual act not be separated, but that the “generative continuum” from fertilization to birth must not be dislocated.17 In other words, when a woman becomes pregnant, she must not choose that pregnancy to be of a child not her husband’s, even if such a child would die otherwise. Tonti-Filippini believes that it is intrinsically wrong to choose such a moral object, because “her generative capacity, which … includes or is at least so linked to her capacity to become pregnant and to bear a child in her womb, and is not merely her capacity to produce ova and to express her love in the conjugal act, belongs to the marital union, and hence may not be given outside marriage.”18 The moral dimension of procreation does not end at the point of conception, but continues through the pregnancy. Becoming pregnant by another man, even through IVF, is not morally neutral. It is like adultery, although, says Tonti-Filippini, not as vicious, presumably since it is chosen for the good end of saving the child.19

The understanding of pregnancy is important to Tonti-Filippini’s argument. He calls it an ontological change, whereby a woman becomes a mother. He also distin-

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17Ibid., 120.

18Ibid., 124 (original emphasis).

19Ibid.
guishes between genetic motherhood and gestational motherhood.\textsuperscript{20} To him, motherhood is not only about having one’s oocyte fertilized (genetic motherhood)—pregnancy (gestational motherhood) is essential to motherhood, so essential that pregnancy must only come about within the bonds of marriage. A pregnancy coming about by rape is not to be terminated because the pregnancy has already begun, but it would be wrong to \textit{choose} to become pregnant outside of marriage. To choose such an act would be to choose infidelity to the marriage.

There are two ways to respond to this argument, it seems to me. First, one must determine whether Tonti-Filippini has correctly identified the object of the act of embryo transfer. Second, one must look to see if it makes sense to say that becoming pregnant (in the sense of gestational motherhood), rather than conceiving a child, is the morally significant moment. I think the answer to both questions is no.

What is the object of this act? As we have seen above, it is the proximate intention of the act, as distinguished from the end, which is the ultimate intention of the act. One must ask what the woman who has the embryo implanted in her womb intends to do. The ultimate end is to help the child. It matters not whether we characterize the end of the act as rescue or adoption, as long as the end is good. Both rescue and adoption have good ends. But what is the nature of the act undertaken to achieve this end? The physicality of the act is obvious enough: it involves the rehydration of the frozen embryo and the mechanical implantation of that embryo in the uterus of the woman. But nowhere in that physical description can one find wrongness. One must look at what the persons involved in the act intend.

Is the intention to violate the bonds of marriage? Imagine the case where a devout couple, learning of the plight of the human beings kept in “concentration cans,” decides that the wife will undergo implantation. What is the couple doing? The intention of their action can be construed in many ways. They could be seeking to adopt the child, to rescue the child, and/or to provide a loving home for one who otherwise will live only as a commodity. In order to achieve the end of adoption, they need first to gestate the child. The object of the act is therefore to give life, or as Grisez puts it, “to have the embryo moved from the freezer into your womb and to nurture him or her there.”\textsuperscript{21} In order to reach the ultimate end of adopting the child, one must achieve the proximate end of gestation. It is \textit{this} that is intended, and which most obviously determines the object of the act: to nurture the child. There is no intention to violate the marriage bond, as there would be if the couple themselves sought to have a child conceived in vitro for the purposes of adoption. The act of adopting a child that already exists is not a violation of the goods of marriage, and neither is the act of adopting an embryo that already exists, unless one can make the argument that becoming pregnant with the child is itself a \textit{de facto} violation.

\textsuperscript{20}Ibid., 118.

Tonti-Filippini argues that it is, using as his premises the following: (1) fidelity of the spouses, as expressed in *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;”22 (2) his redefinition of motherhood as beginning at impregnation: “I hold that motherhood is begun by impregnation, and that normally occurs at the instant of fertilization, but not so in IVF;”23 (3) the fact that embryo transfer makes the woman pregnant by a man not her husband.24 Therefore, since embryo transfer involves the woman becoming a mother not through her husband, it is a violation of the respect due to the bond of marriage.

This argument depends on point 2, the notion that it is gestational motherhood that establishes motherhood, not conception. This is the engine that drives the argument. In fact, Tonti-Filippini goes so far as to say that the donors of sperm and oocyte for IVF are not really parents in a sense. Tonti-Filippini acknowledges that “the relationship is genetic,” but also says, “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.”25 Certainly it seems stranger linguistically not to call them parents, as Berkman notes.26 Yet, strangeness in itself is not proof that something is incorrect. Is it reasonable to to say that motherhood begins with gestational motherhood? There are some puzzles that would result. The names of father, mother, and child are related, and presumably acquire referents at the same time. But if it is *gestational motherhood* that makes a woman a mother, then we will have to say that an embryo, even one conceived in a licit act of marital union, has no mother before implantation. When does a man become a father?

Consider the following case: A couple engages in the marital act. As is possible, fertilization does not occur immediately. The oocyte has not yet been fertilized, but the sperm will remain alive and active within the woman for some time after the act. The father steps out the front door to run some errands and is killed in an accident. The man is dead not only before his child has been born, but before the child has even been conceived. In such a case, would anyone dispute that he is the father? Yet he was not present or even alive when the child came to be. To be a father must mean, at minimum, to provide the sperm that fertilizes the oocyte. If this is the case for the father, should we not say that to be a mother means to be the woman providing the ovum? Otherwise, before implantation, even in the case of children licitly conceived in marriage, we will have the case where a child (the embryo) will have a father but no mother. These puzzles can be resolved, if one rejects the notion that it is gestational motherhood that establishes a woman as a mother.

23Tonti-Filippini, “The Embryo Rescue Debate,” 123.
24Ibid., 120–121.
25Ibid., 123.
It is true that going through a pregnancy does develop a deep and essential relationship between mother and child, but I do not believe this relationship constitutes motherhood. If motherhood and fatherhood have already been established in the embryo because of the genetic contribution of the parents, then I believe that the principle derived from *Donum vitae* regarding marital fidelity (II.A.1.) does not apply, and that Tonti-Filippini’s argument fails. The woman in whom the embryo is being implanted is not being unfaithful by becoming a mother through a woman not her husband, since she is not becoming a mother. She is adopting or rescuing a child that already exists and already has parents.

**Summary**

Embryo adoption is a difficult issue, one whose solution cannot be found explicitly in the Catholic moral tradition. It is a problem that should never have arisen, but nevertheless one that must be addressed. There is no specific guidance from the tradition, but we can make a judgment by considering the entirety of the act according to Catholic principles. Embryo adoption by HET has a good end, the rescue or adoption of the child, and a good object, the nurturing of the child, from which I believe we may conclude that embryo adoption is permissible. There are further issues to be examined, such as the degree to which embryo adoption would involve cooperation with the evil of IVF, and whether such cooperation could cause scandal, thus leading others to choose IVF as something morally good. If such difficulties can be resolved, embryo adoption could be a reasonable and good response to a bad situation, since HET is not disordered in itself.