

The Transfer of Abandoned Frozen Embryos

Identifying the Object of the Act

Rev. Francis M. de Rosa

The debate currently underway concerning the moral licitness of proposals to transfer abandoned frozen embryos into women’s wombs has generated a sizeable number of excellent articles and addresses. Yet I believe that many of the arguments revolve around accidental arguments. That is, they are arguments that do not address directly the question of the proper identification of the *object of the act*.

For example, the fact that the debate is often referred to simply as one concerning “embryo adoption” is tendentious. It prejudices the debate by implying that “adoption” is the object of the act when that has yet to be established. Adoption could certainly be one reason for which the project is undertaken (what is traditionally termed the “end of the agent” or the *finis operantis*), but whether it is the precise moral *object of the act* is another question.

One thing is clear: if it is considered prior to identifying its moral species, the *technical procedure* can accurately be termed an *embryo transfer* (ET). But identifying the *moral species* is the key question, for of the three sources of morality (the *fontes moralitatis*)—the object, end, and circumstances—it is the *object of the act* that is ultimately determinative. Pope John Paul II has said:

The primary and decisive element for moral judgment is the object of the human act, which establishes whether it is *capable of being ordered to the good and to the ultimate end, which is God*.¹

¹John Paul II, *Veritatis splendor* (August 6, 1993), n. 79 (original emphasis).

I wish to argue that the precise object of the act at hand is the *impregnation of a woman outside of the marital act* and that this is precisely what is freely chosen. Granted, the object is chosen for a good end, namely, the saving of a child's life. Yet because the object of the act is such, embryo transfer shares in the evil of in vitro fertilization (IVF), although the latter is more egregious in that it is a more primary evil.

This is important because intending to get pregnant outside of the marital act cannot but impact upon the good of marriage itself. How could one assert the contrary? And getting pregnant is manifestly part and parcel of this proposal. We cannot treat *impregnation* as on par with organ transplants or blood transfusions or other bodily manipulations. Calling this "impregnation-outside-of-the-marital-act" is crucial to the debate.

In John Paul II's encyclical the distinction is made between a properly *moral* object and "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."² This is in line with the principle that two actions can be physically the same but morally diverse. For example, the physical act of "sexual intercourse" may be, in moral terms, adultery or fornication or the marital act. Likewise, the physical act of "removing eyes" could be morally described as torture, punishment, or therapeutic surgery. "Swallowing an anovulant pill" could be either sinful contraception or licit menstrual regulation. One could go on with examples. The point is that in order to morally evaluate a given proposal, one must first accurately distinguish between its *physical* and *moral* species. And this requires the due inclusion of sufficient descriptive qualifiers, one being the essential distinction between proximate intentions chosen by the agent.

Intention

Yet how does one make this distinction? It should not be reduced to determining one's intention in the sense of "purpose" or "reason for doing the act." This is clear when one considers that a man may fornicate for various "intentions," understood as "reasons for committing an action." These may be either good or evil (e.g., to express his love and affection for his betrothed or, on the other hand, to attain selfish pleasure with a one-night stand). In each case, despite the intention, "fornication" is still immoral. The reason is that the act of fornication has its own "intentionality," which is sexual intercourse between unmarried persons. *What* has been deliberately chosen? In other words, *what* is the proximate end of the choice? In the case just described, for both examples of intentions, it is "sex between unmarried persons." Therefore, in either case something immoral has been chosen.

John Paul II further states that "in order to be able to grasp the object of an act which specifies that act morally, it is therefore necessary to place oneself *in the perspective of the acting person*."³ This is important because one cannot identify the object of the act without placing oneself in context, because the action does not subsist in an abstract void detached from an agent. Rather, actions gain their specification through the intentionality of reason and will. St. Thomas Aquinas in a very

²John Paul II, *Veritatis splendor*, n. 78 (emphasis added).

³Ibid. (original emphasis).

pertinent passage says: “Moral acts take their species according to what is intended, and not according to what is beside the intention [praeter intentionem].”⁴

If we were to put flesh on this principle, we could illustrate thus: Whereas one woman takes an anovulant pill because she *intends* to render herself infertile, another woman may take an anovulant pill because she *intends* to regulate her menstrual bleeding. With the second woman the infertility is a foreseen but unintended side effect of her choice. She does not choose infertility as a means of stopping irregular bleeding. Two effects, one good and one evil, proceed from the taking of the pill. Yet she does not directly sterilize herself so as to regulate the bleeding. At any rate, to obtain a moral evaluation, “taking the pill” insufficiently describes what is being proposed; this description contains no “moral intention.”

Of course, that “moral intention” which is operative in determining the object of the act is the *proximate* intention. This is important, lest one slip into the error of saying that one’s intention, considered as *purpose*, is the moral determinant of the object of the act. To clarify further, one could “intend” (as proximate end) an act of contraception because one “intends” (as purpose, reason, or remote end) various things; for example, to preserve the wife’s health, to save money for a vacation, or to secure more free time for oneself, etc. Regardless of the latter varied *purposes* of this proposal, one is evaluating in each case an act which evokes moral concern: *contraception*. Thus, in this situation the evil of infertility is directly intended, not as a foreseen but unintended side effect, but precisely as a means to an end. But merely “taking an anovulant pill” does not necessarily evoke such moral concern. Some objects, in the words of John Paul II, “are by their nature ‘incapable of being ordered’ to God because they radically contradict the good of the person made in His image.”⁵ “Intending to contracept” is such an object. “Taking an anovulant pill” is not.

Impregnation

The choice that is entered into with ET is the choice to “transfer an embryo into one’s womb.” And this is simply another way of saying “impregnate.” We are not speaking of a mere locational transfer such as moving the embryo from one freezer to the next, across the table, or from one laboratory to another. The transference is *in and of itself* an *impregnation*, and in choosing the transference, one necessarily chooses *impregnation*. One has intentionally chosen to impregnate the woman with the embryo *so as to* nurture, rescue, and perhaps adopt the baby.

Let us make two comparisons to elucidate the issue further. In a first comparison, we could see embryo transfer in the same order as “swallowing an anovulant pill” (as part of a proposal to regulate menstrual bleeding). With the latter, the infertility is *praeter intentionem*. The object is simply to regulate the bleeding.

However, in a second comparison, we could see embryo transfer in the same order as “intercourse” (as part of a proposal to express love and affection). But what

⁴Thomas Aquinas, *Summa Theologiae* II–II, Q. 64.7 body. In this article, the translation is from Aquinas, *Summa Theologica*, trans. Fathers of the English Dominican Province (Westminster, MD: Christian Classics, 1981).

⁵John Paul II, *Veritatis splendor*, n. 80.

if the intercourse is between two unmarried persons? The qualifier “between the unmarried” changes everything. Now we see that this specific, morally qualified act of intercourse fails to fulfill the objective demands of the moral law. The circumstance of “the two being unmarried” is *inherently embedded in the proposal*. We cannot speak of an act of intercourse without acknowledging that it is between either the married or the unmarried. If we limit ourselves to such a description as “intercourse” alone, then we have what St. Thomas called a merely physical description of the act.

Similarly, how can one speak of a transference of an embryo into a womb that is not in actuality an impregnation? And how can one directly intend to transfer an embryo into a womb and not directly intend to cause pregnancy? Pregnancy is not *praeter intentionem* in the way that infertility would be in the above case of the anovulant pill, nor is it simply foreseen. The woman is directly seeking to get pregnant via technical transfer (ergo, outside of the marital act) so as to rescue the embryo.

The impregnation is inherent to the project. The woman must explicitly intend pregnancy as an essential component of what she wishes to accomplish. She needs and desires the pregnancy in order to reach her goal of rescuing, nurturing, or adopting the embryo.

Likewise, when a couple chooses IVF, it must be said that they are choosing, as the object of their act, conception outside of the marital act. They might see it otherwise. They might see it as conceiving a child, building their family, permitting their love to flower, etc. But the fact remains—their object is a non-marital-act-conception, which should never be directly intended. They need and desire the technological conception in order to achieve their goal. Likewise, the couple who accepts embryo transfer needs and desires a non-marital-act-impregnation in order to attain their goal of rescue or adoption.

If this analysis is correct, we should then describe the proposal thus: Impregnation of a woman outside the marital act (*object of the act*, determined by the proximate intention) for the laudable purpose of rescuing the embryonic baby (remote intention of the agent or *finis operantis*). The *circumstances* are the abandonment of the frozen embryo and the willingness of a woman to undergo the transfer procedure.

The rule or measure of this act of embryo transfer must be pregnancy normally achieved; i.e., by a marital act performed *in humano modo*. Therefore, in light of the foregoing arguments, it seems to me to be untenable to maintain that embryo transfer has nothing to do with the good of marriage. *God has established that the marital act be the cause of pregnancy*. Anything else is in fact an aberration.

Therefore, in the case of the embryo transfer procedure, the ultimate moral determinant, the object of the act (i.e., impregnation of a woman outside the marital act) would arguably violate the good of marriage itself and thus would be properly judged as intrinsically evil.