

Embryo Adoption, Nuptiality & the Annunciation

A Moral Analysis Of HET As A Licit Means of Adoption Within Certain Moral Criteria

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FROZEN EMBRYOS & FROZEN MORALITY

Embryonic-stage children are being stored cryogenically in a state of suspended animation. They are indeed children; not just a collection of preserved cells or genetic tissue and not potential life, but living embryo-persons. This presents a grave injustice.¹ They cannot be intentionally destroyed or left to thaw; that moral object would clearly be involuntary active/passive euthanasia. So those of us who accept a Christian anthropology find any solution a complicated affair. They possess the same dignity as all humans; do we not “acknowledge these frozen embryos [as] are our brothers and sisters in mankind...and in Christ.”² Just knowing that seems to demand action from us on their behalf; they must be saved. But to bring them to birth requires implantation outside of the marital act. Why would these frozen embryo-persons existence, although tragic, be an exception? From a Roman Catholic perspective, any conceivable solution appears to have us at a stalemate. The CDF document, *Donum Vitae* remarks plainly that these embryos are left with an “absurd fate, with no possibility of their being offered safe means of survival that can be licitly pursued.”³ The surface conclusion then is to condemn the actions which led us into this dilemma and withhold any attempts at rescue that will only increase the evil. I will, with great trepidation and sobriety, offer the Annunciation as a paradigm that may aid in a resolution.

¹ Cryopreservation is “*incompatible with the respect owed to human embryos*”. Cf. Congregation for the Doctrine of the Faith, *Dignitas Personae*, 2008, §18.2.

² Surtees, Geoffrey, “Adoption of a Frozen Embryo”, *Homiletic & Pastoral Review*, August-September 1996, V96, p.7.

³ *Donum Vitae*, I, 1, §5.

CONCERN FOR THE TERMS

What should we call these tiny human beings? In consideration of what blessed Pope John Paul II refers to as an ‘adequate anthropology’, it is preferable to refer to these children at least as ‘embryo-persons’. Often our psychological ‘state of mind’ frames the interior understanding of identifying them as ‘persons’. In fact, the state of Georgia has of July 2009 enacted legislation governing embryo adoption, where it should be noted that “the biggest change [was moving] the language from treating [the embryo] as someone’s property to treating it as someone’s child.”⁴ Children are not property—words can communicate that. Secondly, the term ‘adopting’ is preferable to ‘rescuing’. “The shortcoming of “rescue” as a descriptor is that it implies something other than what gestating an embryo is...the relationships of the “rescuer” [think emergency personal] is transient and impersonal.”⁵ Adoption is not; it is welcoming and lasting. As for the conjugal act, it is the joining together of man and woman in the sexuality proper to marriage with the ends of unity and procreation. There are those, Catherine Althaus for one, who “proposes that the term ‘conjugal act’ should be understood as beginning with the act of intercourse, and be completed with the point of the birth of the child.”⁶ For this treatise, the period after fertilization until birth is gestation. The desired ‘ends’ of the conjugal act are not to be equated with the act itself; the act leading to pregnancy is not pregnancy. Finally, nuptiality has a broader meaning that transcends the sexual act [conjugal]. It can be, and is, suprasexual—*communio*.

⁴ Gurr, Stephen, “Georgia’s Newest Laws Now In Effect”, July 01, 2009, Accessed November, 2009, <<http://www.gainesvilletimes.com/news/archive/20665/>>.

⁵ Collins, Timothy P., M.D., “On Abandoned Embryos”, *Linacre Quarterly*, Catholic Medical Association, 75(1) February 2008, p. 6.

⁶ Althaus, Catherine, “Can One ‘Rescue’ a Human Embryo?-The Moral Object of the Acting Woman”, *The National Catholic Bioethics Quarterly*, Spring 2005, p. 114.

A SIMPLE CASE, NOT A SIMPLE SOLUTION

Under consideration will only be the ‘simple case’ of adopting the embryo-person via HET⁷. The couple is in a licit marital union—*consummated prior to implantation*. There is full informed consent of both the present father and mother. The child will be brought to term and become part of that family covenant, for God’s and the child’s sake. Too, the goods of all involved must be satisfied, embryo-person, mother, father and society. The three *fons*, particularly the moral “object [*finis operis*] rationally chosen by the deliberate will”⁸ must properly be identified and all three be ‘good’. The solution must satisfy whether it “can it ever be morally licit for a woman to be voluntarily pregnant with someone else’s child, outside of the marital act?”⁹ If the answer is yes, and shown by precedent or moral qualification to be licit, then it becomes not just allowed, but a principled imperative. Most other scenarios outside the simple case becomes immoral by a deficient intention [*operantis*] or circumstance and disqualifies adoption as being licit.

THE MAGISTERIAL DILEMMA

There is apparent conflicting Magisterial direction in this matter. In 1987, *Donum Vitæ* asserted that the “right to become a father or a mother [can only be] through each other.”¹⁰ This appears to dismiss HET outright, although it didn’t attempt how to resolve the embryo adoption. Later in 2008, the CDF issued a document entitled *Dignitas Personæ*, which stated, “all things considered, it needs to be recognized that the thousands of abandoned embryos represent a *situation of injustice which in fact cannot be resolved*.”¹¹ As it addressed this topic, the issue seemed settled. But note that *Donum Vitæ* did implicitly qualify implantation when referring to

⁷ HET is an acronym standing for ‘Heterologous embryo transfer’.

⁸ Pope John Paul II, “Veritatis Splendor”, St. Paul Books and Media, 1993, §78.1.

⁹ Collins, p. 1.; Satisfying this would also contribute to resolving other scenarios not addressed presently.

¹⁰ Congregation for the Doctrine of the Faith, *Donum Vitæ*, 1987, I, A, §1.

¹¹ *Dignitas Personæ*, §19.5.

“those embryos *which are not transferred into the body of the mother.*”¹² This minimally advocates that it is not intrinsically evil to transfer the embryos-persons to all wombs. Implantation back into the genetic mother appears to be actually recommended. But that same last line from *Donum Vitæ* ends with the ominous line stating there is “*no possibility* of their being offered safe means of survival which can be licitly pursued”¹³. Does this mean in the end that embryo-person adoption is certainly “an extraordinary, but ultimately a misguided charity,”¹⁴ and is to be denounced?

TRANSLATION DIFFICULTY

There is hermeneutical concern with the line, “no possibility of there being offered safe means of survival which can be licitly pursued”.¹⁵ Granted, the basis of one’s argument shouldn’t rest on a discrepancy over translation, but words can have multiple connotations in translation and it does not undermine the text to make an effort in better understanding the meaning behind the words. Geoffrey Surtees points out that...

“The key words are ‘no possibility’ (*non pateant*). In the authoritative Latin Lexicon of Lewis and Short, we find another definition for the verb *patere* that would appear to provide a more appropriate translation. Not only does *patere* mean ‘to be allowed,’...it also means ‘to be clear or manifest; to be well known.’”¹⁶

The translation of *non pateant*, translated ‘without any possibility whatsoever’—[i.e., the typical meaning in American English], would contradict the apparent moral obligation also given to

¹² *Donum Vitæ*, I, 1, §5, [emphasis mine].

¹³ *Ibid*, [emphasis mine].

¹⁴ Tonti-Filippini, Nicholas, “The Embryo Rescue Debate-Impregnating Women, Extogenesis, and Restoration from Suspended Animation”, *The National Catholic Bioethics Quarterly*, Spring 2003, p. 124.

¹⁵ *Donum Vitæ*, I, 1, §5.

¹⁶ Surtees, p. 9.

have “those embryos ...transferred into the body of the mother”¹⁷ which appears in the very same sentence from *Donum Vitæ*. Should it read ‘no possible’ safe means of survival, or ‘no well known’ means of survival? This would be no small difference and the latter seems likely.

MAINTAINING THE ENDS OF MARRIAGE

There is the concern whether adopting the embryo-person “violates the [connection] established by God...between the unitive significance and the procreative significance which are both inherent to the marriage act.”¹⁸ Fertilization has already taken place; the embryo-child is not a ‘genetic’ gift of the man and woman or incidentally from the procreative/unitive significance of their conjugal act. “The illicitness and evils of ‘generating human life outside of the conjugal act’ and the ‘natural, generative instinct’ being proper to marriage alone is not in question.¹⁹ The moral object in this simple case is to adopt the child from the cryopreserved state, carry the embryo-person to term and welcome the child into the family. But Tonti-Filippini argues that this is precisely why it is not licit. He contends that this harms the unitive significance because “a woman is not free to give herself to being impregnated with a child from outside of marriage...[and comments further, that though] not with all its viciousness, HET may be akin to adultery.”²⁰ This confuses the attitude of the women in each case. Aquinas differentiates between adultery and the conjugal act in that “although it is accidental to the external action to be ordained to some particular end, it is not accidental to the interior act of the will.”²¹ The distinction Aquinas makes [albeit the comparative scenarios differ—implantation/conjugal act & adultery/conjugal act] is to make the point that with adultery, the

¹⁷ *Donum Vitæ*, I, 1, §5

¹⁸ Pope Paul VI, *Humane Vitæ*, 1968, §12.1.

¹⁹ May, William E., *Catholic Bioethics and the Gift of Human Life*, Our Sunday Visitor, 2008. cf. p98, et al.

²⁰ Tonti-Filippini, p. 124.

²¹ Aquinas, ST, I-II, q18, a6.

external actions may be ‘ordained’ to the same end [impregnation], but the act of the will is radically different. Tonti-Filippini misidentifies the *finis operis*. The unitive expression cannot be identified “alone with the species of the act, [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.”²² Both lead to pregnancy, with consent of the ‘mother’.

HET AND NUPTIALITY

To determine the presence of both the nuptiality and fruitfulness, and how those dual purposes relate to our HET adoption case, a scenario would be illustrative. With the consent of her husband, a woman says ‘yes’ to bringing a child into the world via HET. The implantation is unsuccessful, but the unused embryos are retained cryogenically. Both spouse’s relation to the frozen embryo-children is genetic.²³ But with the passage of time, the woman’s husband dies. In time, she enters into a sacramental and lawful marriage with another man. The couple has a change of heart as to the licitness of keeping the embryos preserved and decide to have the genetic mother, the non-genetic husband’s wife, re-implanted.²⁴ *In nuce*, the husband in this scenario is not the genetic father of the embryo-person, but a lawful spouse of the genetic mother who is to be impregnated at the direction [obligation?] of the Church. Does this rupture either the procreative or unitive meanings of the body? Did not *Donum Vitæ* state “spouses mutually express their personal love in the ‘language of the body’, which clearly involve both ‘spousal

²² May, p. 100.

²³ Recall the Church recommends, nay, even states the moral obligation of the genetic mother to have the embryo re-implanted, per *Donum Vitæ*.

²⁴ It would require further moral qualification in the case of a genetic father and non-genetic mother couple, or if neither genetic parent is present, then the legal guardians of the embryo-child, being licit to implant and carry through to term. Still, neither of these scenarios should be regarded as surrogacy. Surrogacy is an entirely different *finis operis* and *finis operantis*.

meanings' and *parental ones*''?²⁵ What action, except to allow implantation, would satisfy this scenario morally according to *Donum Vitæ*? The embryo-person is not the genetic offspring of both parents; only the mother and she would be obligated to have the child re-implanted. Must both be genetically related, or just one? How does this compare logically to it being an illicit act only where there is *no* genetic connection between spouses and embryo-child?

EMBRYO ADOPTION, NUPTIALITY AND THE ANNUNCIATION

Does Mary, welcoming the Man-God in Body, help in understanding this dilemma of embryo-person adoption? It is not without trepidation that one may utilize such an austere event for comparison, but our scenario does resemble the relation of Mary to Joseph and [albeit unique] to the Annunciation. In the case of the genetic mother, the embryo is re-implanted with the consent of the non-genetic father. Likewise, the Holy Couple were betrothed, where Mary was Jesus' mother and Joseph had no genetic relation to Jesus.²⁶ If the union of Mary and Joseph remains a model for marriage [procreative and unitive significance, nuptial and fruitful], then would not likewise, the embryo-person's adoptive couple? Pope John Paul II said, "It is precisely the marriage of Mary and Joseph that brings to realization in full "freedom" the "spousal gift of self" in receiving and expressing such a love".²⁷ Pope John Paul II can assert this because the only "true love is gift-love."²⁸ That love is transcendent of the individual, and a disinterested type of love. That is the type and quality of love between the holy couple. The act of Mary's *fiat* did not impede the 'sign' of their love or marital ends. How then would the act of a couple adopting an embryo-person not genetically related "impede or deny the 'sign' of the

²⁵ *Donum Vitæ*, II, B, §4b—emphasis mine.

²⁶ It is understood that with our 'simple case' the act is implantation and with the Annunciation, the act is fertilization. But the genetic relation stands as an accurate analogy.

²⁷ Pope John Paul II, *Redemptoris Custos*, 1989, §7.5.

²⁸ Scola, Angelo Cardinal, *The Nuptial Mystery*, William. B Eerdmans Publishing Co., 2005, p. 56 ff.

covenant both man and woman have entered into? Do not the two, “in body, continue to make visible what is invisible”?”²⁹ Does the body cease to speak this language of nuptiality? Embryo-person adoption is not outside of the nuptial relation of the spouses. The marriage of Mary and Joseph contained this nuptial meaning. “Their marriage was precisely what allowed Mary to live the procreative dimension of the nuptial meaning of the body by physically bearing Jesus as her Son.”³⁰ St. Joseph had no ‘physical’ conjugal relations with his spouse; the Annunciation provides the Church with the relevant typology. The act of the Annunciation is particularly related to Mary’s sexuality. Mary neither reduced her sex [noun] or reproductive sexuality [verb] at the Annunciation. The adoptee mother does not either.

WELCOMING IN BODY

Jesus as Man “welcomed God bodily, and Mary welcomed Jesus and then John to Mary [the home is an extension of the body], for this giving welcome is always linked in some way to *bodiliness*.”³¹ And the language of the husband to his wife in the adoption of the embryo-person, even without the conjugal act, remains a nuptial language expressed in body. It is important to recognize that the nuptial meaning of man and woman, conferred by the Father, was fully realized in Mary’s marriage. God did not circumvent the possibility of the ‘sign’ just in this one extraordinary case, and then hold up that exception as a paradigm of all families. In “their unusual marriage is ‘...concealed the mystery of the perfect communion of the persons, of the man and woman in the conjugal act.”³² Tonti-Filippini said that with HET, “the husband is isolated from this process by which his wife becomes *with child*...[and] for a time, [the womb]

²⁹ Pope John Paul II, *The Theology of the Body*, Pauline Books and Media, 1997, p. 76. February 20, 1980.

³⁰ Calloway, Donald H., MIC, *The Virgin Mary and Theology of the Body*, Marian Press, 2005, p. 122.

³¹ Scola, p. 108.

³² Calloway, p. 117.

becomes the home of a child that bears no relationship to him.”³³ This seems an odd assertion recognizing the relation of St. Joseph to the Christ prior to the Nativity.

CONCLUSION

In arguing the child-gift must be the fruit of the genetic spouses, one must be careful not to constrain nuptiality to a genetic connection. The genetic bond should not be minimized either, as “ideally, genetic, gestational and social motherhood should all go together.”³⁴ But that ideal is not an imperative. These embryo-persons remain ‘brothers and sisters’ in Christ with their dignity under assault. The adoptee mother is not the conceiving mother, because fertilization occurred outside of both the conjugal act and her body. *Donum Vitæ* states “fertilization achieved outside the bodies of the couple remains...deprived of the meaning and the values which are expressed in the language of the body.”³⁵ But the evil is done.³⁶ That is why the Church obligates her to have the embryo-person re-implanted if she is the genetic mother? That re-implantation preserves the nuptial meaning for the same reason Mary’s relationship to Joseph remained nuptial.³⁷ By extension, there is a nuptial significance in a married couple adopting a non-genetically related embryo-person. Genetics matters, but its absence does not diminish gift-giving nuptial love; it didn’t for Mary and Joseph. It is “*not* intrinsically evil for a woman to allow herself to become pregnant.”³⁸ It is in the act of welcoming that the couple “can remain faithful to [the] gift and...not dishonour the temple of the Holy Spirit, which is the body.”³⁹ To restate Anthony Cardinal Scola, Mary’s *fiat* was not without the consent of Joseph. The Incarnate

³³ Tonti-Filippini, p. 1120.

³⁴ Correa, Juan De Dios Vial & Screccia, Elio, p. 39.

³⁵ *Donum Vitæ*, II, B. §4b.

³⁶ There is participation with evil regardless in re-implantation, but it is material remote.

³⁷ Cf. Note 23.

³⁸ *Donum Vitæ*, I, 1, §5 [NOTE: This line referred to rape or adultery-it is not used as an analogy].

³⁹ Pope John Paul II, *The Theology of the Body*, p. 297. July 14, 1982.

was welcomed into her womb, retaining the nuptial splendor and fruitfulness of her union with St. Joseph. “The act of welcoming a person into our home [manifests] in a remarkable way the intrinsic link between nuptiality and fruitfulness.”⁴⁰ This link is not lost in HET adoption within our narrowly defined moral object. Adoption does not diminish or pervert the nuptiality of the man and woman. It actually *upholds* the language of their bodies in the welcoming of the embryo-person and may be a moral obligation.

⁴⁰ Scola, pp. 108-109, ff.