

Is the Saving of Embryos by Altruistic Surrogacy Morally Wrong?

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Abstract: *One of the outcomes of IVF is that it produces a surplus of embryos that in many cases are unwanted once couples succeed in having a child. These embryos either remain in suspended animation or are thawed and allowed to die. Another possibility is for them to be adopted and be implanted into a surrogate and so be brought to term. There has been no consensus amongst Catholic bioethicists about the morality of embryo adoption, with some arguing for its moral licitness, while others have argued against it. This paper argues that in some cases embryo adoption – altruistic surrogacy – is not morally wrong. These cases, however, are quite limited and involve a preparedness for lifelong commitment to the child brought to term by this process. It is argued that some arguments against embryo adoption employ an equivocation about such terms as impregnation and hence fail.*

Key Words: embryo adoption; IVF; surrogacy; dignity of human life; dignity of marriage; *Donum Vitae*; bioethics

In 1996, following the announcement in Britain that 3,300 unwanted and legally unusable human embryos were thawed and discarded, two hundred women from Massa, a little town in Tuscany, banded together and asked to carry out a pre-natal adoption. It was their response to the terrible plight of the embryos and was a dramatic demonstration of their commitment to respect for human persons from their earliest beginnings.¹ Not everyone writing within the Catholic tradition neither then nor more recently has agreed that this is a morally licit response.² It is contended that though in certain cases it is not morally wrong for a woman to save the life of a human embryo by freely deciding to gestate a child, it is an extraordinary act of altruism and there are serious prudential reasons for being circumspect about embryo adoption. It is argued that the contention that embryo adoption is not morally wrong is consistent with both *Donum*

¹ Francesco Demartis, "Mass Pre-Embryo Adoption," *Cambridge Quarterly of Healthcare Ethics* 7.1 (1998): 101-103.

² In a recent paper, William May states that the magisterium of the Church has no clear teaching on this question, and Catholic Theologians and philosophers are sharply divided in their answers to it. This is quite evident from any survey of the literature. May argues that pre-natal adoption is not morally wrong, whereas Mary Geach and Nicholas Tonti-Filippini take the opposite view. See W.E. May, "On 'Rescuing' Frozen Embryos: Why the Decision to Do So Is Moral," *National Catholic Bioethics Quarterly* 5.1 (2005): 51-57. See also M. Geach, Part I of "Are There Any Circumstances in Which It Would Be Morally Admirable for a Woman to Seek to Have an Orphan Embryo Implanted in her Womb?" in L. Gormally (ed.), *Issues for a Catholic Bioethic: Proceedings of the International Conference to celebrate the Twentieth Anniversary of the Foundation of the Linacre Centre 28-31 July 1997* (London: The Linacre Centre, 1999) and N. Tonti-Filippini, "The Embryo Rescue Debate: Impregnating Women, Ectogenesis and Restoration from Suspended Animation," *National Catholic Bioethics Quarterly* 3.1 (2003): 111-138

Vitae and other recent Church documents. Arguments against this position rely heavily on two main conditions which separately as well as jointly entail that surrogacy, including embryo adoption, is always morally wrong:

- (1) that embryo adoption always involves the exploitation of the surrogate or woman adopting the embryo; and
- (2) that it always involves a violation of the integrity of marriage.³

That is, virtually without exception, surrogacy involves the exploitation of the surrogate and since surrogacy involves procreation which is not the fruit of the exclusive and specific act of a husband and wife, that similarly virtually without exception, harm is done to that union.⁴ Both of these conditions, however, are too strong and must be qualified by the circumstances in which the act or acts of surrogacy occur.⁵ There is at least one circumstance, embryo adoption, in which surrogacy is not immoral.

In order to explicate the circumstances under which surrogacy involving embryo adoption may be considered to be moral, we shall examine four cases. In all of these cases, we shall assume that the persons involved are prepared to be maintain a lifelong commitment to the child whom they bring to term.⁶

- (1) A married couple, with other children, who offer to adopt the child following its gestation by the wife;
- (2) A financially secure infertile couple who offer to adopt the child following gestation by the wife;
- (3) A widow, with children, who offers to gestate and adopt the child; or
- (4) A single woman who offers to gestate and adopt the child.

Further, let us suppose that in all cases the embryo is unrelated to the gestational mother or, in cases (1), (2) and (3), the husband. It is argued that in at least the first two cases, embryo adoption can be considered to be moral, though, as indicated above, it is an extraordinary act of selfless and lifetime commitment that few in reality could carry out.

The clear message from *Donum Vitae* is that the life of every human being is to be respected in an absolute way from the very instant of the commencement of his or her existence.⁷

³ May adds two further conditions: a) It is intrinsically evil to generate human life by means other than the conjugal act and b) The use of the natural, generative instinct is lawful in the married state only, and in the service of the purposes for which marriage exists. The first is clearly inapplicable, since the human child is already in existence. It is not clear to me that his fourth condition can be subsumed under the second. It seems to me that condition forms part of the understanding of idea of the integrity of marriage. That is, respect for the integrity of marriage involves reciprocal respect for the right to become a father and mother only through each other and this can be taken to include that the natural, generative instinct is exercised through the conjugal union only. See May, "On 'Rescuing' Frozen Embryos," 51

⁴ The use of the expression "virtually without exception" is used to indicate that there may be some exceptions – of which embryo adoption is one. To say surrogacy is always morally wrong, would also rule in embryo adoption, which is precisely what is argued against here.

⁵ This follows from the determination of the morality of an act as involving the intention, the circumstances and the overall action itself.

⁶ Berkman has argued that though gestation of a child may be morally permissible, should the woman do so with the intention of giving up the child for adoption following birth then the act is immoral. See J. Berkman, "Gestating the Embryos of Others Surrogacy? Adoption? Rescue?" *National Catholic Bioethics Quarterly* 3.2 (2003): 309-329. I will not take up this question here.

⁷ See *Donum Vitae, Instruction on Respect for Human Life its Origin and on the Dignity of Procreation* (Homebush: St. Pauls, 1987), par. 16, 18, 19, 20, 22, 28, 31, 54, 55, 56. On these pages is stressed the importance attached to the respect due the human person from the earliest moments of his or her existence.

There may be disputes about when this actually occurs,⁸ but repeated again and again throughout *Donum Vitae* is the message that the human embryo is a person and must be accorded the respect due to a human person. This is in no vicarious sense, but in the same sense that we respect all persons. This means that we respect the embryo's right to life. Although physical life does not contain the whole of a person's value, it is possession of this physical life which is fundamental to human life.⁹ It is recognition of this which grounds the claim that respect for human beings demands that they be brought into the world through the committed conjugal union of husband and wife.¹⁰ Marriage was ordained not only for the companionship of men and women,¹¹ but also for the procreation of children.¹² This is not because being married is a necessary condition for having children, but because respect for the lives of children demands that we provide them with a safe and secure environment in which to be nurtured and to develop as persons. Sadly, it is a fact of life that far too many children are brought into the world through casual, fleeting encounters, unwanted and unloved. This, however, does not mean that we abandon them and allow them to die: recognition of their dignity as human persons who are ends in themselves leads us to do what we can to provide them with an environment in which they can flourish. The circumstances of their conception and birth, whether through immoral means or not, are irrelevant to the obligations we owe them as fellow human beings. The same may be said of human embryos, who are owed the same respect as persons.

To propose to carry a child who is not one's own because otherwise it would lose its life is an extraordinary act¹³ and seemingly flies in the face of arguments about the sanctity of marriage, the place of procreation within it and the violation to bodily integrity which such a pregnancy is said to involve. Supporting such an action, however, is the Christian message of love and hope and Christ's undeniable commitment to the poor, the dispossessed and the weak. What we do for the "least of my brethren", we are told, we do for Christ Himself.¹⁴ Saving the life of an embryo is undoubtedly a good end and the central question here is whether in determining to carry the embryo a woman is thereby using an objectively immoral means to a good end.

The case of surrogacy with which we are concerned is not the standard case in which a couple commission a woman to act as gestational mother in order to produce a child for them. In the case in question, a woman offers to be the mother of a child who

⁸ Norm Ford, for example, argues that the zygote cannot be considered a person and suggests that a human being properly so-called emerges only at the appearance of the primitive streak. See Ford, N. (1988) *When did I begin?* Cambridge: Cambridge University Press. Ford has not substantially modified this view in his later work. See Ford, N. (2002) *The Prenatal Person*, Oxford: Blackwell. More recent scientific work seems to contradict the scientific work on which Ford bases his case and supports, rather, the view that the human embryo is an individual human being from conception.

⁹ *Donum Vitae*, par. 16.

¹⁰ "Human procreation requires on the part of the spouses responsible collaboration with the fruitful love of God; the gift of human life must be actualized in marriage through specific and exclusive acts of husband and wife, in accordance with the laws inscribed in their persons and in their union." *Donum Vitae*, par. 18

¹¹ Gen 2:18.

¹² John Paul II, *Familiaris Consortio* (Homebush: St. Paul Publications, 1981).

¹³ Bishop Elio Sgreccia, President of the Pontifical Academy for Life, has said that counselling women to adopt embryos is asking them to do what is heroic. See *Catholic World Report* (May 2001); <http://www.catholic.net/rcc/Periodicals/Igpress/2001-05/interview.html>; accessed 29 May 2006.

¹⁴ Mt 25:40.

would otherwise be destroyed.¹⁵ That is, the embryo is unrelated to her or to her husband, if she is married. Our discussion of the question, then begins from the fact of the existence of the embryo and the threat of its destruction.

Suppose a married woman, who has other children, with the full support of her husband, offers to carry an embryo which would otherwise be destroyed and, on its birth, the couple offer to adopt the child as their own. *Donum Vitae* declares that 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. This principle emphasises the physical process of begetting a child and we can take this to be referring to the procreative features of conjugal relations between husband and wife. Conjugal relations also have a unitive meaning, so that mutual self giving involves more than just a physical process. Fatherhood and motherhood also consist of far more than just the physical processes involved in begetting a child. In the case of adoption, a couple become a father and mother through others, hence, since we do not regard this as morally wrong, but good, a distinction is drawn between physical fatherhood and motherhood and social fatherhood and motherhood. The emphasis on the child being the product of a specific act of a particular union suggests that an adopted child will never be a sign of conjugal union. However, because a couple decide to adopt a child does not mean that they do not believe that a child that might be conceived by them would not be such a sign nor does it mean that an adopted child cannot be a sign of their mutual fidelity to each other and a concrete expression of their paternity and maternity. No violation of the integrity of marriage takes place. The injunction here is that children ought to be conceived in marriage, but if the child is already conceived, as the embryo already is, an offer to gestate it does not constitute a rejection of this principle nor of the principle that the spouses have a right to become a parent only through each other. That is, the reality to be faced is the actual existence of a child, albeit at the very first stages of development, and an offer to carry the child does not necessarily constitute a rejection of the principle that children should be the fruit of marriage.

Though it is true that the fidelity of the spouses in the unity of marriage involves reciprocal respect of their right to become a father and mother only through each other, not all marriages involve conjugal acts. Mary and Joseph were married, but Mary remained a Virgin. Jesus was conceived of the Holy Spirit and was not Joseph's Son. Augustine says that in the marriage of Mary and Joseph nuptial intercourse alone was lacking.¹⁶ This, we can surmise, means that in all other respects Mary and Joseph loved each other and shared their lives together. The Holy Family is not an example of family in which there is dysfunction, but one which illustrates well that conjugal love is only one aspect of marriage. According to Aquinas, Mary and Joseph both took a vow of virginity.¹⁷ This did not mean that they did not have a true marriage, as Aquinas explains. A marriage is true, he says, if it attains its perfection and there are two parts to this. The first part is the form of the thing in question, that is, what enables us to say what it is, and the second part of attaining its perfection, is through its functioning in such a way that it reaches its end. The form of marriage is the unity of husband and wife through mutual self-giving in love and this cannot be sundered. The end of marriage is the begetting and nurturing of children.

¹⁵ In a special bulletin, CORE drew the attention of readers to the decision to kill thousands of frozen embryos on July 31st, 1996 in accordance with HFEA regulations allowing them to be kept for five years only. See J. Quintavalle, "July Special Bulletin," <http://www.rednet.co.uk/homepages/valle/reform.html>

¹⁶ Augustine, *De Nuptiis et Concupiscentia*, I.12-13.

¹⁷ Aquinas, *Summa Theologica*, III Q.28 Art. 4

Begetting is done through sexual intercourse and the nurturing of children through the myriad ways in which husband and wife support each other in rearing their children. Aquinas says that Mary and Joseph had a true marriage, since they consented to the nuptial bond, giving themselves to each other in love, and, significantly, that they also fulfilled the second perfection, namely, the raising of a child and only carnal intercourse was lacking. Aquinas indicates that though the nuptial bond was open to the possibility of intercourse, in obedience to God, they remained celibate in their union.¹⁸ It would seem then, that though fidelity of the spouses in the unity of marriage involves reciprocal respect for their right to become a father and mother only through each other, the perfection of marriage can be attained without conjugal acts. Significantly, though Mary conceived and carried a Child that was not that of her marriage with Joseph, it did not prevent their marriage from being a true marriage nor did it prevent Joseph being a real father to Jesus. It is possible, then, for an adopted child – including an adopted embryo – to enable a marriage to fulfil both its unitive and procreative ends.

The situation we are faced with in the case of embryo adoption is not a couple who decide that they will use AID and ovum donation in order to have a child instead of through their own conjugal acts, but a couple who decide that they wish to save the life of an embryo abandoned by its own parents and threatened with destruction. Which principle is applicable here? The one which states that the child has the right to be conceived, carried in the womb, brought into the world and brought up within marriage¹⁹ or the one which recognises the sanctity of human life, no matter at what stage of development it is? The stress in *Donum Vitae* is largely on the physical process by which a child is conceived, it is not on what occurs once a child has been conceived, since it seems to be assumed that the woman conceiving the child will carry the child. Neither principle need to be in conflict here, however, since the former is concerned with processes which bring about life whereas the latter is concerned with its protection once it has come into existence. Since they are not in conflict, the former is still upheld by the prospective embryo adopting couple in its totality, but the latter is more obviously lived.

If a married woman is raped and as a result becomes pregnant, although a great wrong has been done to her and although the child she carries is not the fruit of her loving relationship with her husband, we are not justified in terminating the pregnancy on this account (nor on any other account). This is because human life must be respected from the moment of conception, no matter how it is conceived. As *Donum Vitae* says in relation to human conception achieved with IVF and ET, “every child which comes into the world must in any case be accepted as a living gift of the divine Goodness and must be brought up with love.”²⁰ The same applies to a case in which a woman becomes pregnant as a result of an adulterous relationship. The preservation of the integrity of marriage cannot be bought at the cost of the life of the child she carries. In both cases a child has been brought into the world in a manner which does not respect his or her dignity as a human person and so constitutes an additional harm resulting from these acts. The harms done to the conjugal union in these cases, whilst to be taken seriously, are tolerated because the life of the embryo must be respected and safeguarded. The case of embryo rescue constitutes an upholding of the sanctity of human life and a recognition that, though a child has a right to be conceived, carried in the womb and raised within the marriage of his or her parents, it does not lose the right to the preservation and nurture of his or her

¹⁸ Aquinas, *Summa Theologica*, III, Q.29

¹⁹ *Donum Vitae*, par. 35.

²⁰ *Donum Vitae*, par. 47.

life if these rights are denied it. Thus, being conceived outside marriage does not annul the right to life nor does gestation in a foreign womb. If we recognise that the embryo is a human person then we are morally obliged to offer this person every assistance that is humanly possible to preserve his or her life. Although offering to gestate an embryo is beyond what could be said to be morally required of us, if a married couple are prepared to rescue it and raise it as their own child, then any harm which may be done to their conjugal union (and it is arguable whether any harm is done at all) is accepted rather than purposely pursued. In taking the extraordinary step to rescue the embryo from death by offering to gestate it what harms may be done to the conjugal union are tolerated, but not sought.

Condemnation of surrogacy as always involving a violation of the integrity of marriage because it involves procreation which is not the specific and exclusive act of a husband and wife confuses two events which can be distinguished, namely the conjugal act itself which results in conception and the process of gestation.²¹ *Donum Vitae* itself, as we have seen, separates conception, gestation and rearing, saying that the child has a right to have these occur within marriage. Although *Donum Vitae* identifies three elements in the developmental process of a human person, the general condemnation of surrogacy is based on the view that "procreation is deprived of its proper function when it is not desired as the fruit of the conjugal act."²² The emphasis in *Donum Vitae* is on the specific conjugal act as constituting the procreation of a human being. It is seen, therefore, as involving an act of coitus which results in conception. Procreation conceived in this way must be the specific and exclusive act of a husband and wife. A child conceived in this way is linked not only biologically, but also spiritually to the parents who are made one by the bond of marriage.²³ In the normal course of events, the child conceived will be carried by its mother and raised by its parents within a family setting. In the case of embryo rescue, however, the act of coitus and the event of conception (or if IVF is used, fertilization) have already occurred and a living human being, albeit in embryonic form exists.²⁴ There is no act involved for the woman offering to rescue the embryo by gestating it. What occurs is the implantation of an embryo (which has been abandoned) into the womb of the host mother. If we regard coitus as the procreative (and unitive) act, then procreation is achieved when conception occurs and what duties and responsibilities are owed to any human being are owed to the embryo from that point. In the case of adoption, a couple agree to rear a child which is not the fruit of their mutual love, so too, in the case of embryo rescue, a couple agree to rear a child which is not the fruit of their mutual love. In this latter case, the difference is that the child is to be gestated by the adopting couple.

The child's right to be conceived, carried in the womb and brought up within marriage is not absolute, for a premature baby can, with current technology, be kept alive from 23 weeks. With improvement in technology, survival is likely to be possible for

²¹ I do not wish to suggest here that surrogacy is not always wrong. I have taken Heterologous Embryo Transfer (Embryo Rescue) as being a form of surrogacy, since gestation occurs in a womb that is other than that of the genetic mother. In this sense, then, surrogacy is virtually exceptionlessly morally wrong rather than always morally wrong, as indicated in footnote 4 above.

²² *Donum Vitae*, par. 41-42.

²³ John Paul II, *Discourse to Those Taking Part in the 35th General Assembly of the World Medical Association* (29 October, 1983), in *AAS* 76 (1984): 393.

²⁴ For this reason, we cannot conceive of the act of embryo rescue as being the same as rape or adultery. The woman receiving the child in her womb does not engage in any act of coitus either willingly or unwillingly. There is no such act for her or her husband.

babies born at earlier stages.²⁵ Thus a large portion of the time which the child should be spending in the womb is being spent out of it and this may be for a variety of reasons. Hence the right to be carried in the womb is not absolute.²⁶ If the child is orphaned, he or she cannot be raised within a marriage either. This task falls to another couple or, generally less happily for the child, to an institution. Couples who adopt and raise children are involved in the development of a human being, though not in the whole process. In the situation of the couple where the wife gestates the unrelated embryo, the involvement in this development begins much earlier. If we regard the process as having three stages, conception, gestation and rearing, then completion of the second stage of the process of by gestating the embryo in the cases in question, similarly to what occurs in adoption, is undertaken in order to save the life of the child and not just for the satisfaction of the desire to be a parent.²⁷ In any case, the rights of the child are not denied. In the circumstances of an abandoned embryo its rights have already been denied and the offer to gestate it is an attempt to redress a wrong. Adopting a child recognises that he or she has a right to be brought up and a couple who adopt a child seek to take on the responsibility forsaken or unable to be carried out by the child's parents. This is a good and so is the offer to gestate an abandoned embryo. A married couple, with children, therefore, who propose to save the embryo, who have no ulterior motives for doing this and, moreover, are prepared to raise the child as their own are performing a morally good act.

Tonti-Filippini²⁸ proposes two arguments against allowing embryo adoption. Neither argument is convincing. The first argument is to argue that gestational motherhood results from impregnation, which he extends to cover both sexual intercourse and embryo transfer. That is, Tonti-Filippini holds that impregnation which results from heterologous embryo transfer violates the integrity of the conjugal union because husband and wife do not become parents only through each other. The second argument, which to some extent overlaps with the first, is to argue that a woman with child constitutes a new ontological entity and, understanding marriage as a communion of persons, that in becoming pregnant with a child that does not belong to the marital union, she excludes her husband from the communion of persons. He argues that embryo adoption cannot be equated with inviting a child into the marital home, since in the former case, she forms a psychosomatic unity with the child that she is carrying. He is right to say that mother and child share an intimate biological and spiritual connectedness, whether or not the mother and child are genetically related. The issue is whether embryo adoption necessarily results in harm to the union of husband and wife. This does not seem to be so, as has been argued already. Moreover, Augustine writes approvingly of married couples who restrict their desires for sexual intercourse and points to aged couples who despite being infirm and

²⁵ If one presses this point far enough one could say that technology which allows babies earlier and earlier in the limiting case would be able to save a zygote from dying because it could be incubated in the most advanced humidicrib possible. There could be no moral objection to an artificial womb whose purpose was to enable premature babies to survive from an earlier age, because their mothers suffered from endometriosis, for example. On the other hand, there may well be objections to gestation in an artificial womb from conception. The use of an animal womb would also face some serious objections.

²⁶ On one understanding of an absolute right to gestation in the womb would oblige us to find someone to gestate the child.

²⁷ There is no intentional fragmentation of conception, gestation and rearing. This has already occurred, because the embryo has been abandoned.

²⁸ N. Tonti-Filippini, "Embryo Rescue Debate," http://www.lifeissues.net/writers/ton/ton_01embryorescue1.html#b1; accessed 16 March 2006.

unable to have intercourse, still enjoy both perfections of marriage.²⁹ We have already seen, however, in the example of the Holy Family, that conjugal relations are not necessary in order for a marriage to be considered having both its unitive and procreative ends.

Against Tonti-Filippini's first argument, that impregnation can be extended to include embryo transfer, it may be argued that the most natural reading of what is meant by impregnate is an act of intercourse which brings about conception and pregnancy. Impregnate here requires both sexual intercourse and subsequent conception. Tonti-Filippini is right to suggest that with the advent of IVF, that the meaning impregnate can be construed to have taken on a whole new meaning. In these cases, the conjugal act is sundered from the impregnation and it does not have the same meaning. Tonti-Filippini's argument cannot be sustained because of this ambiguity in the term. Thus, he says, that unity of marriage involves reciprocal respect for the right to become and father and mother only through each other and so woman can only become a mother if impregnated by her husband. However, this is to understand impregnate as including both sexual intercourse and conception. In the case of heterologous embryo transfer, impregnation takes place without sexual intercourse. The husband is not betrayed by his wife having intimate relations with another. Impregnation does have a particular significance, but one cannot shift between meanings of the term in the way Tonti-Filippini does.

The second argument is also problematic. He is indeed right to say that love is a gift and conjugal love leads them to become one flesh and that through their union, they become cooperators with God in giving life to a new human person. The woman who is impregnated does result in the creation of a new entity – a mother with child and it is a very special relationship, since a child implanted in a woman's womb is most intimately connected with her, but, and this should not be forgotten, is from the beginning, an independent individual. This point is important, because if we emphasise the special relationship between mother and child, we ought not to forget the special relationship between child, mother and expectant father. It is because the child is an independent human individual that he or she is able to enter into human relationships and is not just in relationship with his or her mother because of the physical intimacy between them. There is also a psychic and spiritual relationship between them. The husband is not precluded from entering into such relationship with the child growing in his wife's womb and this established by the fact of the husband saying "yes" to the adoption of this child.³⁰ If the bond between husband and wife does not depend on conjugal relations between them and impregnation can occur without conjugal relations then it would seem the kinds of impediments blocking the husband entering into a new relationship with both his wife and adopted child are removed. After all, the emphasis should be on all aspects of the relationships that exist – physical, psychic and spiritual. If relationships are important there does not seem to be any reason to restrict these to just those between the mother and the child. If the relationship between husband and wife is strong, then there is no reason why impregnation should so crucially block the development of psychic and

²⁹ Augustine, *On the Good of Marriage: De Bono Conjugali*, par. 2. Of course, we may not agree with Augustine's rather austere pronouncement that sexual intercourse between spouses without the intention of begetting children is to be tolerated because it may prevent adultery, but is not the ideal.

³⁰ Interestingly, with the increase in the popularity of paternity tests, some husbands are discovering that they are not in fact the fathers of the children that they have brought up as their own. This is, of course, a betrayal by their wives, but in many instances, the husbands continue to regard the children they have reared as their own. This is not advanced as an argument in support of the above, but to illustrate that in the right circumstances, the fact of non- genetic relationship does not stand in the way of a marriage being a true marriage in the sense Augustine speaks of.

spiritual relationships between husband, wife and gestating child, even though the child is not genetically theirs.

Turning to the second case, foreshadowed above, if the couple is infertile we may be inclined to the view that there is an element of selfishness in the offer to gestate the embryo, but this ought not blind us to the saving of the embryo's life. Here the matter is more complicated, for if the end of the action is not the saving of the life, but the satisfaction of the desire for a child, then the saving of the embryo is only secondary to this and so the action is performed for selfish ends. It is not the welfare of the embryo which is the prime concern of the action. On the other hand, an infertile couple may argue that their infertility provides the motivation for their altruistic action in wanting to save an embryo. That is, the unfortunate circumstance of their infertility has provided them with the resources to nurture a child and so they are in a position to not only gestate the child, but to provide it with a loving family environment. Because proper respect of the embryo as a human person requires us to never treat it as a means, the saving of the embryo cannot be seen as a solution to their infertility, but must be an act done for its own sake. Nevertheless, just as the childless couple who adopt may do so out of a yearning to be complete, so too an infertile couple may choose to gestate a child in order to have a family, but at the same time do so with a genuine desire to save the child.

In the third case, a widow with children who offers to gestate an embryo in order to save its life does not harm the integrity of the union which resulted in the conception of the embryo since it assumed that it has been abandoned nor does she do harm to her own union because her husband is dead.³¹ Here a relevant consideration may be the extent to which her children, if they are still young enough to be living with her are willing to accept that their mother is having another child. In this case, opposition from her family may constitute grounds for not proceeding with saving the embryo because of the harm it may do to relationships within the family. The reasons here for not saving the embryo may be similar to those for not proceeding with an adoption. Regrettable though we might regard it, opposition from one's immediate family and those dependent on us may be reasons for withdrawing the offer to adopt a child or to gestate the embryo. In this case and the following one, the integrity of marriage is not violated, since there is no marriage involved, so the question of whether it is wrong to rescue the embryo at least in part revolves around the question of whether placing the embryo in the womb is intrinsically immoral. This, however, may be too simplistic a view of the harms that can be done to marriage – not to mention a child – through women gestating a child without the support of a husband.³²

In the fourth case, a single woman who offers to gestate an embryo does not harm the integrity of any marriage for similar reasons that the widow does not. She does not

³¹ A marriage is dissolved on the death of one of the spouses - that is "until death do us part." A widow is free to remarry and have other children and this not regarded as doing harm to the memory of her first husband or to their marriage.

³² It should be noted that there may be substantial harms done to the institution of marriage, for example, i) scandal could be caused by an apparently devout single (or widowed) woman being seen to be pregnant; what is one of the ends of true marriage – the raising and nurturing children in partnership with one's husband – cannot be achieved; ii) embryo adoption may be seen as an opportunity to have a child without the encumbrances of having a husband; iii) it might encourage the formation of families without fathers and so diminish the importance of the role of father in a family. These are not simply consequentialist arguments, but go to the heart of the nature of marriage and what responsibilities lie in deciding to have children. It is here that some of the arguments of Tonti-Filippini are more persuasive. In marriage we have the possibility of total self-giving and the formation of the community of persons, mirroring the union of Persons in the Trinity. This will not be possible for a widow or a single woman. See Tonti-Filippini, "Embryo Rescue Debate."

harm her own union nor does she harm the union of the couple who conceived the child, since it is assumed to have been abandoned or no longer wanted. If we assume the intention is the saving of the embryo, then the objection which we need to consider is whether gestating an embryo which is not one's own is always exploitative. That is, even though the woman has freely offered to carry the child, it is claimed that she is being treated as a means to an end rather than as an end in herself. It might further be objected that in carrying a child outside marriage a woman is using the reproductive powers of her body in an illicit manner, since the child is not the fruit of the conjugal union between the woman and her husband. For a single woman, such a union lies in the future (if there is to be such a union) and so the question is whether one needs to take into account potential harm to a hypothetical union. The immediate issue is whether rescuing an embryo by gestating it a woman is failing to use her body in the way it was intended, that is, her reproductive powers are being used outside a loving, committed relationship and the child she carries is not the fruit of her marriage. Moreover, since the woman fails to use her body in the way it was intended she does harm to herself. Not all cases of harming oneself are morally wrong, however, so rescuing an embryo from death could be considered a case in which such harm as may occur is justifiable, just as suffering burns in rescuing a child from a burning building is justifiably caused harm.

In claiming that carrying another's child is always exploitative and so morally wrong, one has to show that either there are no cases in which a woman is able to make a free decision to carry another's child or that this follows from the intrinsic nature of the act itself. Charlesworth defines exploitation as the coercion of someone, either by force or other means such as through poverty, unequal power, psychological or social or familial blackmail, to do one's bidding.³³ Since we have already stipulated that the women in question make a free decision to gestate the child, we need to examine whether it is in fact possible for a woman to make a free decision in the circumstances which we have described.

Using Charlesworth's definition, we can rule out exploitation by force and also through poverty and perhaps unequal power, because the woman is not being forced to save the embryo nor is she saving the embryo for money nor is it coercion by someone with power over her. Since the child is not related to her, we can also rule out familial blackmail.³⁴ Perhaps in the first two cases where the woman has a husband there is subtle pressure from him to agree to "freely rescue" the embryo. This may be conceded, but this does not mean that a woman can never be aware of such pressures nor that she is not capable of taking this into account in reaching her decision. To deny this leads by degrees to determinism, since if she unable to make a free decision in this case then we have to consider whether there are any situations at all in which she can make free decisions. It seems arbitrary to claim that in this situation a free choice is not possible, but there is in others. If we claim there are no cases in which any person is able to make a free choice the objection is dissolved since the claim that saving the embryo is always exploitative rests on the possibility that in some cases a woman is able to make a free decision, though not this one. More subtly, even in this case the possibility of free choice cannot be ruled out since the concept of exploitation relies on coercion being used. The cases of psychological

³³ M. Charlesworth, *Bioethics in a Liberal Society* (Cambridge: Cambridge University Press, 1993), 78

³⁴ Grisez in *The Way of the Lord Jesus, Volume 3: Difficult Moral Questions* (Illinois: Franciscan, 1997), 239-244, discusses the case of a girl who feels obliged to gestate the embryo of her dead sister in order to save its life. Grisez's careful analysis acknowledges that there could be coercion here of a subtle kind. The cases I am considering avoid this difficulty.

and social blackmail also have to allow for the possibility of free choices being made for the same reasons. The concept of exploitation fits more easily with the more standard cases of surrogacy.

The second reason for objecting to the rescuing of the embryo describes the act of saving the embryo as “carrying a child which is not the fruit of one’s marriage” and asserts that this is intrinsically wrong. It is intrinsically wrong because, described in this way and given that children are to be conceived and nurtured within marriage, we have already judged the act to be wrong. If we describe the act as “carrying another’s child” we need to specify the reasons for claiming that this is objectively immoral. Two of these reasons are:

(1) violation of bodily integrity; and

(2) violation of the sanctity of marriage.

The morality of “carrying another’s child” depends on these further descriptions of the act which themselves have to be examined to determine whether they are intrinsically morally wrong. “Carrying another’s child” is not self-evidently morally wrong.³⁵ Redescription of the act, variously, as “saving the embryo”, “enabling the embryo to live”, “allowing the embryo to develop to maturity” and “gestating an unwanted child” results in a description of the act which leads us to conclude it is morally good. This means that we cannot simply assert that “Carrying another’s child” is intrinsically evil.

The intention of the agent is a crucial element in determining whether an act is moral or not. For example, a physician who gives his patient morphine with the intention that she die commits an act of murder if she subsequently dies as a result of his administration of the drug. On the other hand, a physician who gives his patient morphine with the intention that her suffering be relieved does not commit an act of murder if his patient subsequently dies as a result of the administration of the drug. Judas betrayed Christ with a kiss, but we could not describe the kiss as an act of betrayal unless this was its intention and was carried out in the intended way.³⁶ There is no basic description of the act which does not include an intention. In the cases under discussion, the intention of the women is to save the life of an embryo and the means whereby this is to be accomplished is through gestating it. The intention to save the embryo is good but now the question is whether the means is good.

It has already been argued that it is false to claim that violation of bodily integrity occurs because gestating another’s child is always exploitative, however, there may be other grounds for claiming that bodily integrity is violated. If it is not exploitation, then another objection could be that insertion of an embryo, which is not her own, into a woman’s womb by use of medical technology constitutes an invasion of the woman’s body in an analogous manner to rape. There are obvious differences to rape: (i) there is informed consent, for the action is not coerced and (ii) there is no act of coitus involved. It is therefore difficult to maintain that something analogous to rape is occurring. It could be insisted that the violation consists in the improper use of her womb which must be exclusively used for the gestation of her own children in the context of a loving conjugal

³⁵ What I mean here is that describing an act as “murder” already condemns it as morally wrong, whereas describing an act as “carrying another’s child” is not obviously morally wrong, but relies on redescribing the act in some way.

³⁶ Although I may be held responsible for an act I do not intend, any act which I intend to carry out cannot be said to have been successfully carried out if it occurs as a result of events or acts not intended by me. If, for example, I intend to kill X by shooting him, but in firing my gun at him I miss him completely, hitting instead a rope which releases a ten tonne weight which falls and kills him, my action has brought about X’s death. It has not, however, brought about X’s death in the way that I intended. See D. Davidson, *Essays on Actions and Events* (Oxford: Clarendon, 1980) for discussion of this and related issues.

union. This, however, collapses the argument about bodily integrity into the objection that gestating the embryo involves the violation of the integrity of the marriage and shifts away from a consideration of the violation of the bodily integrity of the woman per se. Bodily integrity encompasses more than sexual violation for bodily integrity can be violated through persuading someone to have plastic surgery, for example, or through removing a kidney without permission.³⁷ In these cases, we use violation in a strong sense where it is violation against the will of the person. This is not always so, for someone can agree to have a kidney removed in order to save another's life. In this case, we do not condemn someone for having allowed her bodily integrity to be violated. It is only when it is against the will of the individual that we do so. Hence, we cannot claim that bodily integrity is violated where a woman willingly agrees to adopt an embryo.

There is no question that the use of surrogacy within the context of marriage involves a separation of the procreative processes and that this violates the integrity of marriage. In such cases, there is the deliberate involvement of third parties in order to have a child. There is the commodification of the child and the exploitation of the surrogate. In this instance, however, of embryo rescue, the situation is rather different, for what unity we might wish existed in the procreative process does not exist (at least the act of coitus by which the embryo came to be does not form part of the procreative process involving the rescuing couple). The act by which the embryo came to exist is separate from the act by which it comes to be implanted in a womb. The embryo cannot be saved except through the generosity of someone prepared to sacrifice her bodily integrity for the sake of the child, someone who out of love for one of God's innocent creatures is prepared to allow her womb to be used in this way. Such a sacrifice is no less noble than someone who sacrifices his or her life for another. Since we can countenance violation of bodily integrity, the argument from violation of bodily integrity is not as strong as the argument for violation of the integrity of marriage, but as we have seen, there need not be a violation of either the unitive or procreative features of marriage.

We cannot claim that the offence against the sanctity of marriage is because of gestation *simpliciter*. For this to be an offence, we need to have established that what constitutes integrity and fidelity in marriage does not include the possibility of carrying another's child in the embryo rescue case, but this is precisely what needs to be established. Implantation is a physical act and so could be thought of as a violation of the body, but as we have argued, this is not *ipso facto* an offence against the sanctity of marriage. Certainly, a third party is involved in the procedure, but it needs to be shown that a procedure of this kind is different in kind to a gynaecological procedure in which an obstetrician examines a woman to ascertain whether she is pregnant or not and all is well with the pregnancy. Impregnation in which the doctor implants an embryo into the womb of the woman is not impregnation in the sense that we mean when a husband and wife have sexual intercourse and she conceives. It is something else and more akin to the kind of invasive procedure that a woman undergoes in a gynaecological examination. The wife does not violate the integrity of her marriage because she does not make herself available to another man with the intention of breaking her marriage vows.

³⁷ This is perhaps not so far-fetched, as there have been instances of persons being kidnapped and having a kidney removed, to be sold to those in need of kidney transplants. See for example, M. Goyal, R.L. Mehta, L.J. Schneiderman, and A.R. Sehgal, "Economic and Health Consequences of Selling a Kidney in India", *Journal of the American Medical Association* 288 (2002): 1589-1593; J. Siegel-Itzkovich, "Israel Considers Paying People for Donating a Kidney," *British Medical Journal* 326 (2003): 126; *The Western Australian* (newspaper, January 22, 2003).

In the final analysis, a key consideration in this situation is the realisation that the only avenue for saving the embryo is through gestating it. What impairments to bodily integrity or to conjugal unity occur are not intended, nor are these the primary objectives of the will. An act of gestation is not wrong in itself and it is a consideration of the total act, including its circumstances, which will determine whether gestating another's child is evil.

We can utilise McCormick's formulation of the Principle of Double Effect to elucidate this case, though only a sketch is provided here. McCormick says that evil caused as one goes about doing good is justified under a fourfold condition:

- (1) The action is good or indifferent in itself; it is not morally evil;
- (2) The intention of the agent is upright, that is, the evil effect is sincerely not intended;
- (3) The evil effect must be equally immediate causally with the good effect, for otherwise it would be a means to the good effect and would be intended; and
- (4) There must be a proportionately grave reason for allowing the evil to occur.³⁸

Applying this analysis of double effect to the act described as "carrying another's child", the action of gestating a child is itself good and so condition (1) is satisfied. This is clear since a woman who has committed adultery carries another's child. We condemn the act of adultery, but not the act of continuing with the pregnancy, for we recognise that the child is innocent. The evil effects, those of violation of bodily integrity and the sanctity of marriage, if they occur, are not intended. We have argued that there is not violation of bodily integrity nor sanctity of marriage, at least not in the two cases involving the married couples. There may be violation of sanctity of marriage in the case of the widow and of the single woman, but this may not be intended, but foreseen. The intention is to save the embryo's life, which is a good intention. So we can say that condition (2) is satisfied. (3) The evil that occurs does so concurrently with the good effect. That is, the violation of bodily integrity occurs at the same time that the woman is pregnant. If there is an offence against the sanctity of marriage, then this too occurs at the same time as child is being gestated. It is false to claim that any offence against the sanctity of marriage occurs at a later time, even though there may be further repercussions. The third condition is therefore satisfied. The fourth condition is also satisfied at least in the first two cases, since there is a proportionate reason for allowing the embryo to be gestated and that is because the embryo would otherwise be destroyed. In the latter two cases, there are proportionate reasons why the lack of a loving relationship involving a community of persons may do such harm that the action of embryo rescue is disproportionate. These have been sketched here rather than outlined in detail. Nevertheless, in the first two cases, this analysis supports the idea that "carrying another's child" is not morally wrong under certain circumstances.

A further question is whether the description of the intended action is best described as "carrying another's child". It has already been argued that the act cannot be described as impregnation by another either, since impregnation is being used in two senses and it remains to be argued that it is a mistake to conflate these, for the argument that it is wrong trades on understanding impregnation as involving the conjugal act, (conception obviously) and implantation in the uterus, whereas in the case of embryo rescue, impregnation involves only implantation. The question then is whether

³⁸ R. McCormick, in R. McCormick and P. Ramsey (eds.), *Doing Evil to Achieve Good* (Chicago: Loyola University Press, 1978), 7.

implantation of an embryo in a woman's womb is morally wrong. Implantation of something into the body is not wrong *per se*, since we happily implant heart monitors and the like, so the question is whether it is morally wrong to implant an embryo. In the case of a couple's own embryo, while we might condemn the use of ART because it replaces the conjugal act which results in conception with an act in which gametes are mingled in a laboratory by a third party, once that embryo is formed, it would seem to compound evils if it was not implanted within the woman. That is, there would be a further evil act – namely, bringing into being another human being only to then carry out another evil act of allowing him or her to die. In what has been argued, where impregnation is understood as implantation alone (rather than including the act of coitus) the role of the technician is not that of impregnator, but only as a facilitator of pregnancy. One would not condemn the technician if the embryo was found in, say, a severed fallopian tube and she was able to join the severed ends to enable the embryo to continue on its journey to the uterus. Neither would we condemn the technician if she helped prepare the woman's womb (where this was a problem) to enable the embryo to implant. Understood in this way, it does not seem that implantation of an embryo is intrinsically disordered. If this is right, then given what has been already said about the remaining conditions, embryo adoption is not morally wrong for at least the first two cases considered.

It is concluded that embryo adoption is not wrong in at least two of the four cases which have been considered here. It may be considered wrong in the cases involving women who are widowed or single because of the absence of a strong nuptial bond necessary for the creation of the community of persons involving mother, father and child. Embryo adoption does not always involve the exploitation of the woman nor does it always involve a violation of the integrity of marriage. There would, however, be important reasons why this should not be generally encouraged because of the dangers posed to the integrity of marriage and the expectation that might be fostered that married women and men committed to the sanctity of human life ought to take on the responsibility of rescuing embryos as a matter of course. In this analysis, given the commitment that is required, it remains an extraordinary act of selflessness.

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