



Essays



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On “Rescuing” Frozen Embryos

Why the Decision to Do So Is Moral

William E. May

The question is whether it can be morally permissible for a woman, whether married or unmarried, to have an abandoned and frozen human embryo transferred from the freezer to her womb to nurture it until birth as a means of protecting its life. I believe that this question can be answered affirmatively. 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.¹

Before giving reasons to support an affirmative answer to the question, I want to affirm the truth of the following propositions to which opponents of an affirmative answer also assent. An affirmative answer to the question of abandoned embryo transfer in no way contradicts these propositions (despite the claims of some who oppose an affirmative answer): (1) It is intrinsically evil to generate human life by means other than the conjugal act. (2) 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.”² (3) It is intrinsically evil for a woman to serve as a surrogate mother. (4) “The use of the natural, generative instinct and function is lawful in the married state only, and in the service of the purposes for which marriage exists.”³

¹In this paper I have corrected some errors that I made in defending the affirmative answer to this question in previous writings on the subject, e.g., in my *Catholic Bioethics and the Gift of Human Life* (Huntington, IN: Our Sunday Visitor, 2000), 94–107, where I mistakenly claimed that “becoming pregnant” was not within the scope of the object freely chosen by the woman who chooses to have a frozen embryo transferred from the freezer into her womb. I am grateful to those, like Mary Geach, who alerted me to this error.

²Congregation for the Doctrine of the Faith, *Donum vitae* (February 22, 1987) II. A. 1.

³Pius XII, “Address to Italian Union of Midwives,” October 29, 1951.

Although it is intrinsically evil to *generate* human life by means other than the conjugal act, as noted already, it is *not* intrinsically evil for a woman to allow herself to become pregnant by means other than the conjugal act. Fornication and adultery, of course, are intrinsically evil, and one reason why is that fornication and adultery are opposed to the good of any child who could be conceived as a result. But a woman who fornicates or commits adultery cannot seek to prevent the conception of a child as a result of her fornication or adultery, because it is intrinsically evil to contracept. If a child is conceived, she is obliged to nurture it in her womb until birth; i.e., to become pregnant.⁴ Nor is it evil for a woman who has been raped to allow herself to become pregnant. As will be seen, some opponents of an affirmative answer claim that it is intrinsically evil for a woman to allow herself to become pregnant by means other than the conjugal act.

Moral Considerations Central to an Affirmative Answer

In developing an affirmative answer, I rely on these key moral considerations: (1)

*The morality of the human act depends primarily and fundamentally on the 'object' rationally chosen by the deliberate will ... 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. The object of the act of willing is in fact a freely chosen kind of behavior.*⁵

(2) “We offend God only by doing something contrary to our own *good*.”⁶ (3) “Reason attests that there are objects of the human act which are by their nature ‘incapable of being ordered’ to God because they radically contradict the good of the person made in his image.”⁷ (4) For a human act to be morally good, the end for whose sake the object is chosen must be good and the circumstances under which the act is done must also be good.

Reasons Supporting an Affirmative Answer

What is the *object* freely chosen by the woman, married or single, in “rescuing” an abandoned and frozen embryo? This object is precisely “to transfer this unborn human baby from the freezer to her womb and to nurture it there until birth.” This object is the means freely chosen by the woman. It includes her being pregnant, insofar as pregnancy is required in order to nurture the child in her womb. Moreover, her pregnancy is not the result of an immoral act of generating human life whether by fornication, adultery, or the use of new reproductive technologies. The

⁴On this see, for example, St. Thomas Aquinas, *Summa contra gentiles*, 3.122, where the Common Doctor, after showing that simple fornication is evil because it is opposed to the good of the life of the child who could be conceived as a result, goes on to say that preventing its conception by contraception is an even greater evil. Thomas Aquinas, *Summa contra gentiles*, Book Three: Providence, Part II, trans. Vernon J. Bourke (Notre Dame: University of Notre Dame Press, 1975), 142–147.

⁵John Paul II, *Veritatis splendor* (August 6, 1993), n. 78 (original emphasis).

⁶Thomas Aquinas, *Summa contra gentiles*, 3.122 (emphasis added).

⁷John Paul II, *Veritatis splendor*; n. 80.

child has already been generated in a way that violates his or her dignity, but the woman in no way collaborated in its immoral mode of generation.

This chosen object is not opposed to any good of human persons. It is obviously not opposed to the good of human life itself; rather, it protects the good of the life of the unborn child. Nor is it opposed (as are fornication, adultery, artificial insemination, in vitro fertilization, and other means of generating life in the laboratory) to the good of human life in its transmission—the person to be transferred to the womb already exists. The baby whose life it is ought not to have been generated in the way it was, but now this new person exists, and like babies conceived through IVF and implanted in the womb of the woman who supplied the ova or through fornication, adultery, or rape, it has the same immeasurable worth and deserves the same loving care as any other human person. Nor is this object opposed to the good of marriage, because the woman is *not* choosing to give herself in an act of genital union to someone to whom she is not married. She is not choosing to share the unitive and procreative dimensions of herself as a sexual person with someone to whom she is not married. And these goods—human life itself, human life in its transmission, marriage, and marital union—are the *goods* relevant to the object chosen. The end for whose sake this choice is made is also good, namely, the protection of the good of the life of the already living unborn child, who otherwise will die.

Nor is the woman in any way cooperating in the evil of in vitro fertilization or choosing to bear the child for the benefit of other persons, as a surrogate mother does, but rather for the benefit of the child himself or herself. The nurturing she proposes to give does not involve her in the wrongs already done to the baby, and it will be given for the baby’s good and not the good of other persons. Moreover, the woman is not cooperating in any evil project undertaken by the technicians whose aid is needed in transferring the baby from the freezer to her womb. On the contrary, while they usually cooperate in immoral activities, on this occasion these technicians are cooperating with the woman in treating the baby as a person whose life is intrinsically good and worthy of protection.

To avoid scandal, the woman should take care to let it be known that she regards in vitro fertilization and surrogate mothering as intrinsically evil, that babies produced artificially are human persons of incalculable value and in need of protection, and that her only interest is to protect an abandoned unborn baby’s life.⁸

Answers to Objections

Two major objections are leveled against this position. The first denies that *any* woman, married or unmarried, can rightly choose to rescue the life of a frozen and abandoned unborn baby, because, some holding this view claim, it is intrinsically wrong

⁸This argument is clearly presented by Germain Grisez, *Way of the Lord Jesus*, vol. 3, *Difficult Moral Questions* (Quincy, IL: Franciscan Press, 1997), Question 51, 239–244. I presented the argument, but not as clearly or accurately, both in my *Catholic Bioethics and the Gift of Human Life* (Huntington, IN: Our Sunday Visitor, 2000), 101–107, and in “The Morality of ‘Rescuing’ Frozen Embryos,” in *What Is Man, O Lord? The Human Person in a Biotech Age*, ed. Edward J. Furton (Boston: National Catholic Bioethics Center, 2002), 201–215.

for a woman, whether married or unmarried, to allow herself to become pregnant by means other than the conjugal act,⁹ while others holding it rightly claim that it is intrinsically wrong to serve as a “surrogate” mother, but that this is precisely what the woman, whether married or unmarried, is choosing to do.¹⁰ The second objection, while defending the moral licitness of a *married* woman’s “adopting” a frozen and unborn embryo and having it transferred from the freezer to her womb, maintains that it is not morally licit for an *unmarried* woman to do so, because she is not capable of giving the child the home to which it has a right and is willing to abandon it after birth.¹¹

What about the claim that it is intrinsically evil for a woman to allow herself to become pregnant by means other than the conjugal act? I noted at the beginning of the paper that although it is intrinsically evil to fornicate or commit adultery, it is *not* intrinsically evil for a woman who fornicates or commits adultery to allow herself to become pregnant. Indeed, she is obliged *not to contracept* but rather to nurture in her womb any child who might be conceived as a result of her act of fornication or adultery.

Moreover, *Donum vitae* itself clearly proposes that the woman who has had a child conceived in vitro is *under a moral obligation* to have her unborn child implanted in her womb where she can nurture it and carry it to term. The passage in question is the following: “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.”¹² Note that *Donum vitae* explicitly calls the woman whose ovum was fertilized in vitro to “make” the baby its “mother”¹³ and it clearly indicates that she is obliged to have her child

⁹This objection is developed in different ways primarily by Nicholas Tonti-Filippini (“The Embryo Rescue Debate: Impregnating Women, Ectogenesis, and Restoration from Suspended Animation,” *National Catholic Bioethics Quarterly* 3.1 [Spring 2003]: 111–138) and by Mary Geach (Part 1 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 *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*, ed. Luke Gormally [London: The Linacre Centre, 1999], 341–346; and “Rescuing Frozen Embryos,” in *What Is Man, O Lord?*, 217–230).

¹⁰This is the position taken by William B. Smith, “Rescue the Frozen?” *Homiletic and Pastoral Review* 96.1 (October 1995): 72–74.

¹¹On this see Helen Watt, Part 2 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 *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*, ed. Luke Gormally (London: The Linacre Centre, 1999), 347–352. The view is most strongly championed by John Berkman, “Gestating the Embryos of Others: Surrogacy? Adoption? Rescue?” *National Catholic Bioethics Quarterly* 3.2 (Summer 2003): 309–329 and “John Berkman Replies” in the Colloquy section of *National Catholic Bioethics Quarterly* 4.1 (Spring 2004): 12–14.

¹²Congregation for the Doctrine of the Faith, *Donum vitae*, I. 5. (emphasis added).

¹³Significantly, Tonti-Filippini refuses to call this woman the baby’s mother.

transferred to her womb and nurtured. However, one cannot be obliged to do what is intrinsically wrong. Therefore, the claim that it is intrinsically evil for a woman to allow herself to become pregnant by means other than the conjugal act is falsified.

Interestingly, Mary Geach attempts to answer this argument. She notes that Helen Watt had claimed that a woman who had conceived a child by IVF and has embryos in storage is obliged to bear them.¹⁴ One cannot be obliged to do what is evil in itself. Geach attempts to answer this objection by claiming that certain passages from St. Thomas seem to lead to the conclusion that at times we can be obliged or at least permitted to do what is intrinsically evil.¹⁵ The problem with this reply by Geach is that if that were Aquinas’s view, it would be one of those rare instances in which he made a bad mistake. However, in fact, the texts cited can be understood otherwise than Geach interprets them.

Those who claim that it is intrinsically evil for a woman to allow herself to become pregnant by means other than the conjugal act write beautifully about the bond uniting marriage, the conjugal act, and the generation of human life. I am in full agreement with what these authors (Tonti-Filippini and Geach) say about the beauty, uniqueness, and exclusiveness of this bond—in fact Geach refers to some previous writings of my own on this matter in developing her position.¹⁶ All this is true, but it is *irrelevant* to the issue precisely because, as I have noted already, *no marital act* is involved in the “rescue” attempt. I agree that it is intrinsically evil for a woman to *generate* a child by means other than the conjugal act, e.g., by means of fornication, adultery, or the use of new “reproductive” technologies. But the woman who chooses to transfer a frozen, orphaned, and *unborn baby already generated* in vitro from the freezer to her womb and to nurture it there as a means of protecting its life is definitely *not* choosing to *generate* a child by means other than the conjugal act. Moreover, as noted above, this woman is *not* choosing to engage in the conjugal act or in any sexual act, and she is *not* choosing to exercise the unitive and procreative dimensions of her sexuality with a person other than her husband.

To support his claim Tonti-Filippini cites *Donum vitae* II. A. 1.: “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.” I accept the truth of this proposition, as noted above. This proposition, however, is found in a section of the document which answers the question, “Why must human *procreation* take place in marriage?” (emphasis added), and where the answer is that “a truly responsible *procreation* vis-à-vis the unborn child must be the fruit of marriage” (emphasis added). But in our case, *procreation* is definitely *not* involved. The child has al-

¹⁴See Watt, Part II of “Are There Any Circumstances,” 348.

¹⁵See Geach, “Rescuing Frozen Embryos,” 226, footnote 12, where she indicates that Aquinas teaches this in the following passages: *Summa theologiae*, I–II, Q. 19.6, reply 3; II–II, Q. 62.2, obj. 2; III, Q. 64.6, reply 3; *De veritate*, 17.4, reply 8.

¹⁶See Geach, “Rescuing Frozen Embryos,” 221, note 5, where she refers to what I had said about an “integrist” understanding of human sexuality in my *Sex, Marriage, and Chastity: Reflections of a Catholic Layman, Spouse, and Parent* (Chicago: Franciscan Herald Press, 1981).

ready been conceived; i.e., procreated in vitro. The woman who has the orphaned frozen embryo transferred to her womb to nurture it there is *not* engaged in *procreating*. Hence the objection misses the mark.

What of the claim that the woman rescuing the frozen embryo is serving as a surrogate mother? Smith claims that any woman, married or single, seeking to rescue frozen embryos in this way acts as a surrogate.¹⁷ This is simply not true. Smith ignores the context in which *Donum vitae* condemns surrogacy. *Donum vitae* says that a “surrogate” mother is one who carries the pregnancy with a “pledge to surrender the baby once it is born to the party who commissioned or made the agreement for the pregnancy.”¹⁸ However, the woman in our affirmative answer, whether married or single, is definitely not carrying the child on behalf of other parties who have commissioned the pregnancy. She is serving only the unborn child.

Finally, what of the claim by John Berkman, who thinks that a single woman who has the frozen embryo transferred to her womb and who nurtures it there is not acting morally if she intends to give it up for adoption afterwards. Berkman says that analogies used by Germain Grisez and me (e.g., that the woman is acting in the way that foster parents do) are false analogies, and that the rescuing woman is the one who is “ultimately responsible” for the child and because of this responsibility is guilty of “abandoning” the child if she intends to give the child up for adoption after birth.¹⁹

Here I wish to say that my earlier effort to answer Berkman’s objection was inadequate.²⁰ I had emphasized that his objection was based on the woman’s prior intention to give up (and for him this means “abandon”) the child after birth. I had claimed that this was not the woman’s *present intention*, i.e., the object freely chosen, but was a *further intention*. In his reply Berkman insisted that the intention to give up the child after birth was indeed part of the chosen object.²¹ Having considered this objection more fully, I now think that, since it is an intention *with which* the single woman does choose to have the frozen embryo transferred to her womb and nurtured there until birth, Berkman is correct and it is part of the object freely chosen.

But the issue is whether this intention makes her choice to rescue the child immoral. I do not see why it does. A poor girl pregnant out of wedlock who refuses the father’s urgings to get an abortion and, confronted with his refusal to provide for the child, decides to give it up for adoption to assure that her baby will be well cared

¹⁷Smith, “Response,” *Homiletic and Pastoral Review*, 96.11–12 (August–September 1996): 16–17.

¹⁸Congregation for the Doctrine of the Faith, *Donum vitae*, II. A. 3., asterisk footnote.

¹⁹Berkman, “Gestating the Embryos of Others,” 325.

²⁰See May, “The Embryo Rescue Debate,” in the Colloquy section of *National Catholic Bioethics Quarterly* 4.1 (Spring 2004): 9–10.

²¹John Berkman, “John Berkman Replies,” *National Catholic Bioethics Quarterly* 4.1 (Spring 2004): 12–14.

for, is not abandoning the child. The same is true of the woman who generously undertakes to rescue an embryonic person whose short life otherwise would end in the freezer or in some even more miserable way. Such a woman who gives the child up for adoption after birth does so not because she is seeking to abandon the child, but because she is acting for the good of the child, for its adoptive parents can then give it a good home. But her giving the child up for adoption is in no way abandoning the child or breaking trust with it. She is not acting contrary to any human good, for she is not attacking the good of the child's life, the good of marriage, the good of procreation, or any other good. She is rather serving the good of the child's life here and now.