

A Thomistic Analysis of Embryo Adoption

Charles Robertson

Abstract. Although two documents from the Congregation for the Doctrine of the Faith have given instruction on the moral problems of artificial reproductive technologies and the importance of respecting the lives of cryopreserved embryos, no definitive judgment has been made regarding the possibility of rescuing those embryos by means of embryo transfer into the uterus of a willing woman. This essay offers an analysis of the morality of embryo transfer in light of the ethical principles of St. Thomas Aquinas and argues that the proper use of our generative potential is only safeguarded by being restricted to marital intercourse. The arguments of those who favor the adoption model are considered and rejected in light of a Thomistic analysis of the categories of paternity, maternity, and filiation. *National Catholic Bioethics Quarterly* 14.4 (Winter 2014): 673–695.

The Congregation for the Doctrine of the Faith, in its instruction *Donum vitae*, made the judgment that heterologous artificial fertilization and embryo transfer “clearly contradict the unity of matrimony, the dignity of the spouses, the proper vocation of the parents as well as the right of the child with a view to which it should both be conceived and brought forth in marriage and through marriage.”¹ The reason for this negative judgment is that “the bond which comes to be between the spouses gives

Charles Robertson is a doctoral candidate in philosophy at the Center for Thomistic Studies at the University of St. Thomas in Houston, Texas.

¹ Congregation for the Doctrine of the Faith (CDF), *Donum vitae* (February 22, 1987), *AAS* 80 (1988): 70–102, II.A.2: “At fecundatio artificialis heterologa tum unitati matrimonii, tum coniugum dignitati, tum vocationi parentum propriae aperte contradicit, itemque iuri filii ad quem spectat ut et concipiatur et enascatur in matrimonio et per matrimonium.” All translations are by the author except where otherwise noted.

to them the objective and inalienable exclusive right that each become a father and mother only through each other.”² The CDF instruction *Dignitas personae* asserts, “The teaching of *Donum vitae* remains completely valid, both with regard to the principles on which it is based and the moral evaluations which it expresses.”³ It reiterates the principle that “*the origin of human life has its authentic context in marriage and in the family*, where it is generated through an act which expresses the reciprocal love between a man and a woman. Procreation which is truly responsible vis-à-vis the child to be born ‘must be the fruit of marriage.’”⁴ Citing Pope Benedict XVI, it appeals to the natural law foundation of this principle: “Natural law, which is at the root of the recognition of true equality between persons and peoples, deserves to be recognized as the source that inspires the relationship between the spouses in their responsibility for begetting new children. The transmission of life is inscribed in nature and its laws stand as an unwritten norm to which all must refer.”⁵

With this natural law principle in mind, *Dignitas personae* rejects the proposal to put frozen embryos at the disposal of infertile couples: “The proposal that these embryos could be put at the disposal of infertile couples as a *treatment for infertility* is not ethically acceptable for the same reasons which make artificial heterologous procreation illicit as well as any form of surrogate motherhood.”⁶ The same judgment is made with respect to prenatal adoption: “This proposal, praiseworthy with regard to the intention of respecting and defending human life, presents however various problems not dissimilar to those mentioned above.”⁷ Those opposed to embryo adoption note that embryo adoption does not entail surrogacy as defined in *Donum vitae* (II.A.3) inasmuch as it does not necessarily entail surrendering the child born to another party. They argue, however, that it is similar to surrogacy in that surrogacy, like heterologous in vitro fertilization (IVF) and embryo transfer, “*is opposed both to the unity of matrimony and to the dignity of the procreation of the human person.*”⁸ Consequently, when *Dignitas personae* notes with force that “it needs to be recognized that the thousands of abandoned embryos represent a *situation of injustice which in fact cannot be resolved,*”⁹ opponents of embryo adoption

² Ibid.: “Vinculum, quod inter coniuges intercedit, ius exclusivum dat illis obiectivum atque inalienabile, ut uterque fiat pater et mater nonnisi per alterum.”

³ CDF, *Dignitas personae* (September 8, 2008), n. 1.

⁴ Ibid., n. 6, original emphasis.

⁵ Ibid.

⁶ Ibid., n. 19, original emphasis.

⁷ Ibid.

⁸ CDF, *Donum vitae*, II.A.3: “... *opponitur enim tum unitati matrimonii, tum etiam dignitati procreationis personae humanae,*” original emphasis.

⁹ CDF, *Dignitas personae*, n. 19, original emphasis. Of course, those who argue in favor of embryo adoption disagree with this reading. See, for example, William E. May, “Summary and Reflections on *Dignitas Personae*,” Culture of Life Foundation, January 15, 2009, <http://www.culture-of-life.org/content/view/536/111/>; John Finnis, “Understanding *Dignitas personae* on Embryo Adoption,” in “Symposium on *Dignitas personae*,” ed. E. Christian Brugger, *National Catholic Bioethics Quarterly* 9.3 (Autumn 2009): 474–477; and

see a confirmation of their judgment that there are no licit means available to bring these children to term.

Although the combined force of *Donum vitae* and *Dignitas personae* seems to close the door to the possibility that embryo adoption could be a morally licit way of dealing with the problem posed by the existence of thousands of frozen embryos, this has not prevented debate from continuing among Catholic ethicists. Many believe that the interpretation of those documents offered here is insufficiently nuanced, but even if it is correct, there are two significant problems. First, the demand that responsible procreation take place as the fruit of marriage involves a certain ambiguity; does procreation here refer only to the way in which a person is conceived, or does it include the gestation and birthing of the child? Second, the form of the CDF instructions, namely, their assertion of principles and application of them to specific situations, leaves the average person wondering how those principles were attained. In that connection, Jason Eberl, an advocate of embryo adoption, in a Spring 2010 article in the *National Catholic Bioethics Quarterly*, sought to “highlight various assertions found in [*Dignitas personae*] which, as stated, may be subject to critical scrutiny by those holding contrary viewpoints and which therefore require more explicit argumentation.”¹⁰ With respect to embryo adoption, he highlights Nicholas Tonti-Filippini’s suggestion that it would be morally licit to thaw out frozen embryos, thus returning them to their natural state, as a result of which the embryos would inevitably die.¹¹ Eberl counters that this would hardly be a “natural” death for the embryo and points out that *Donum vitae* seems to rule out this possibility when it states that “it is therefore not in conformity with the moral law deliberately to expose

Edward J. Furton, “Embryo Adoption Reconsidered,” *National Catholic Bioethics Quarterly* 10.2 (Summer 2010): 329–347.

¹⁰ Jason Eberl, “What *Dignitas personae* Does Not Say,” *National Catholic Bioethics Quarterly* 10.1 (Spring 2010): 90. Eberl has himself defended the liceity of embryo adoption in a paper coauthored by Brandon P. Brown: “Ethical Considerations in Defense of Embryo Adoption,” in *The Ethics of Embryo Adoption and the Catholic Tradition: Moral Arguments, Economic Reality, and Social Analysis*, ed. Sarah-Vaughan Brakman and Darlene Fozard Weaver (New York: Springer, 2007), 103–118.

¹¹ Eberl seems to misinterpret Tonti-Filippini’s proposal. Eberl says, “One possible course of action the CDF does not address is to thaw embryos without reactivating them, not for the purpose of using them in research, but to allow them to die if other avenues, such as prenatal adoption, are morally closed off. Tonti-Filippini proposes this as a ‘natural’ way to resolve the issue of what to do with cryopreserved human embryos, in that they would be exposed to the natural effects of time from which their frozen environment had artificially sheltered them.” Eberl, “What *Dignitas personae* Does Not Say,” 93. Tonti-Filippini, however, suggests that they “be restored to their natural dynamic state,” that is, “that they be thawed in moist conditions (in which hydration and the removal of the anhydrating chemicals can occur),” which would, in effect, reactivate them. Nicholas Tonti-Filippini, “The Embryo Rescue Debate: Impregnating Women, Ectogenesis, and Restoration from Suspended Animation,” in *Human Embryo Adoption: Biotechnology, Marriage, and the Right to Life*, ed. Thomas V. Berg and Edward J. Furton (Philadelphia: National Catholic Bioethics Center, 2006), 112.

to death human embryos obtained ‘in vitro.’”¹² He then argues that we may have a duty to prevent the death of such embryos by means of embryo adoption, which could be seen as “an opportunity that offers the active respect and human care affirmed by the Church repeatedly through its emphasis on our positive duties to human life.”¹³ He notes, however, that *Dignitas personae* “seems to close the door to this option,” but suggests that the Church’s negative judgment on prenatal adoption could be a source of scandal, “insofar as it may appear hypocritical for the Church to refer to embryos as ‘subjects of essential rights’ and assert that they ‘should therefore be protected by law as human persons,’ while denying the fulfillment of the positive duty to safeguard, and not merely avoid ending, innocent human life afforded by prenatal adoption.”¹⁴ In light of Eberl’s critique, then, it is incumbent on the Catholic moralist not only to give a judgment on the liceity of embryo adoption, but also to give a rational foundation to the principles undergirding that judgment. I propose, therefore, to give an analysis of embryo adoption in order to arrive at the laws that would either proscribe or permit it. To that end, I will (a) analyze the intentional act in order to discover its object, (b) attempt to establish the law to be observed in the proposed intention, and (c) respond to recent arguments in favor of embryo adoption.

Analysis of the Intentional Act and Identification of the Object in Its Natural Species

Since proposing embryo adoption to oneself is an intentional action, one must analyze the intentional act into its various moments. That is, in intending an end one must choose means to bring that end into fruition. What are the objects of choice, the means one must employ, in order to bring about the adoption? Since practical reasoning begins from the endpoint of the action, it must be resolved to a first step in execution, which will be the first object of choice. If any of the objects of choice are contrary to the order of reason, that is, the order that the action *should* have as opposed to the order it actually has, it will be contrary to nature. An act that is contrary to nature, then, is an action that goes against the order of reason that ought to govern the act. Now, in our proposed case of aiming at embryo adoption, we can easily discern the means required to achieve our end, namely, procuring the embryo. This in itself gives rise to moral questions, but I will not concern myself with them at the present time.¹⁵ But supposing that the embryo has been procured and is in

¹² Eberl, “What *Dignitas personae* Does Not Say,” 93, quoting the Vatican translation of CDF, *Donum vitae*, I.5, http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19870222_respect-for-human-life_en.html. The Latin version reads, “Moralibus igitur normis contradicitur, si data opera embryones humani in vitro producti morti exponuntur.”

¹³ Eberl, “What *Dignitas personae* Does Not Say,” 93.

¹⁴ *Ibid.*, 94.

¹⁵ The procurement of frozen embryos is currently governed by contract law; from the legal standpoint, the “donor” relinquishes ownership of the embryo and transfer ownership to the “adoptive parents.” Nightlight Christian Adoptions, “Embryo Donation and Adoption 101,” PowerPoint slide 6, 2010, http://www.embryooption.org/files/2010_embryo_donation_adoption_101.pdf. From the point of view of the legal transaction,

the possession of the “adoptive” parents, what is the course of reasoning that takes place? Surely, adoption entails much more than procuring a child; the desired end of the adoptive parents is that they raise the child as their own, bringing the child to maturity by providing for her physical, emotional, intellectual, and spiritual needs.

First in the order of intention, but last in execution, then, is that the adoptive parents raise the embryo as their child. On the hypothesis of this end, a certain order of means becomes necessary: first, the mother must give birth to the child; second, the woman must become pregnant; and third, the existing embryo must be transferred into the woman’s uterus, as the means to pregnancy. The first action, then, in the order of execution will be the woman’s allowing a technician to act on her body in virtue of its potential to carry a child. This potential exists in her because her physical constitution is such that certain of her bodily organs are ordered to the procreation of offspring. These bodily organs are the vehicle of her generative power. The generative power has as its subject the whole body–soul composite and as such is dependent for its operation on the existence and proper functioning of certain bodily organs, namely, the organs of the reproductive system.¹⁶ This single power, which exists in all living things, is the ontological basis of the activities of the organs of the reproductive system, and has as its formal object the continued existence of the species.¹⁷ Since the uterus is an organ of the reproductive system, to direct this organ to its proper activity (gestation of a conceptus) is to introduce an order into it that is either in accordance with the teleological order of the generative faculty or not. The uterus exists for the sake of the proper activity of the generative faculty; hence, to intend to use the uterus entails a use of the generative faculty itself. The intentional order of the action is accomplished by the use the adoptive mother makes of her generative faculty, first by allowing a technician to introduce the embryo into her womb, then by gestating the child for nine months, and finally by giving birth. Consequently, the intention to give birth to a child, whether that child is one’s own or not, always entails the choice to make use of the generative faculty.¹⁸ Hence, the

the embryo is treated as a piece of property. The legal recognition of the embryo as a person with rights would have to modify this practice such that it could be legally viewed as adoption rather than transfer of ownership. This fact of the current legal situation, however, does not necessarily entail that the embryo is treated as a piece of property by its adoptive parents. One could argue that the situation is akin to buying a slave in order to free him; the fact that there is currently no legal recognition of the embryo as a person does not mean that the adoptive parents necessarily treat it as a piece of chattel.

¹⁶ Thomas Aquinas, *Summa theologiae* (ST) I, q. 77, a. 5. The essential internal organs of the reproductive system in women are the vagina, uterus, fallopian tube, and ovaries. Some medics include the breasts as a reproductive organ, but the fact that women can have healthy pregnancies without having breasts indicates that they should not be included as organs of the reproductive system. Consequently, this should be taken into account when the comparison between wet-nursing and embryo transfer is made.

¹⁷ *Ibid.*, q. 78, a. 2.

¹⁸ Contrasted with traditional legal adoption, then, there is a very clear difference: in traditional adoption, the intention to raise a child as one’s own does not entail the choice to use the generative faculty, whereas embryo adoption necessarily entails that choice.

moral goodness or malice of embryo transfer will be determined by the order of reason governing the proper use of the generative faculty.

Every morally good action will be rational; it will follow the order of reason. Order, according to St. Thomas Aquinas, relates to reason in four ways. First, there is the order that is established in reason by the consideration of order in nature. The order found in nature is twofold; there is the order of things considered as parts as they relate one to another, and the order of each individual thing to its proper end. Second, there is an order that reason establishes in its own acts, namely, the rules of logic. Third, there is an order which reason establishes in the will concerning good and evil actions. Fourth, there is an order which reason establishes in external acts governing the technical arts.¹⁹ Now, the order of reason which governs human action by introducing order into the will is not the same as the order that is introduced into reason by the consideration of order that exists in the world around us. The latter order, however, is the necessary precondition of reasoning about things to be done. *Nemo dat quod non habet* (no one [can] give what they do not possess); if reason has not had order established in it by the consideration of order in the universe, it will not be able to introduce an order of reason in the will, and there will be no properly human activity. The order of the universe considered by reason, then, is the matter of deliberation about things to be done: “Just as the potter’s conceptions are constrained by the physical realities of clay, so practical reason is constrained by the causal realities in the world around us.”²⁰ Human beings do not create their own ends *ex nihilo* (out of nothing); man finds himself in an ordered universe, which itself teaches him about his place and role in it. Man also finds this order within himself, inasmuch as he is, with respect to his physical constitution, a part of nature. The natural inclinations that the human agent discovers in himself, then, are the basis for first principles of moral action, determining the content of natural law. By knowing the ends of his various appetites or inclinations, he will be able to direct himself to his proximate natural end. It is the prerogative of the rational creature not only to act for an end (even the beasts do that), but also to act explicitly for it.²¹ Without a knowledge of these natural inclinations, a human person could not direct himself explicitly to his proportionate natural end.

A natural inclination is rooted in some capacity that a being has which is distinguished from its other capacities on the basis of the capacity’s formal object.²² The formal object of a natural inclination has the character of a final cause, and so has the character of being the proper good of the inclination.²³ The inclination will be perfected by being ordered to its proper object. On the other hand, to order the inclination to some object other than its formal object will introduce a disorder

¹⁹ Thomas Aquinas, *In decem libros Ethicorum Aristotelis ad Nicomachum expositio*, 1.1.

²⁰ Steven J. Jensen, *Good and Evil Actions: A Journey through Saint Thomas Aquinas* (Washington, DC: Catholic University of America Press, 2010), 85.

²¹ *ST* I-II, q. 91, a. 2.

²² *ST* I, q. 77, a. 3.

²³ *Ibid.*, ad 1.

into human action; the inclination will not be directed to its proper good and so will fail to foster the good of the being whose inclination it is and whose purposes it serves.²⁴ Such a disordered act can in no wise perfect the agent; to the contrary, the practical order introduced by such an act will have the character of evil, being “contrary to nature.”²⁵

Natural inclinations are hierarchically ordered such that the higher presuppose and encompass the lower, with the result that the lower powers are at the service of the higher.²⁶ At the foundational level is that inclination which humans share with every being, namely, the inclination proper to each *substance* for its own preservation in existence.²⁷ Next, there are inclinations shared by every *living* thing, namely, nutrition, growth, and reproduction. Nutrition and growth are ordered to the perfection of the individual being, nutrition by sustaining its existence, and growth by bringing it to its perfect mature size. Reproduction, however, is ordered not to the good of the individual as such, but to the good of the species; hence, the fundamental, primary end of the reproductive power is the mature offspring of the parents that is the same in kind as its parents.²⁸ Then, insofar as a being is capable of *sensation* and locomotion, there are inclinations that nature provides for ordering these capacities to the sensible good, namely, the sensitive appetites.²⁹ The sensitive appetites are two in number: the concupiscible appetite, whose formal object is the delectable good, and the irascible appetite, whose formal object is the arduous good.³⁰ Finally, because man is a *rational* creature, he has also a rational appetite, the will, which inclines him to the intelligible good.³¹ Since we have identified the object of the intentional act of the adoptive parents as the use of the generative

²⁴ *ST* I-II, q. 8, a. 1; and q. 75, a. 2.

²⁵ *Ibid.*, q. 76, a. 6, ad 4. Thomas reserves the name “sin against nature” for those sexual sins that essentially frustrate the teleological order of the generative faculty, but every sin is “against nature” in the sense that it is contrary to the law of nature. I will argue that embryo transfer is “against nature” in the second sense, but not in the first.

²⁶ *Ibid.*, q. 77, a. 4; and q. 94, a. 2.

²⁷ *ST* II-II, q. 64, a. 5.

²⁸ *ST* I, q. 78, a. 2: “Est tamen quaedam differentia attendenda inter has potentias. Nam nutritiva et augmentativa habent suum effectum in eo in quo sunt, quia ipsum corpus unitum animae augetur et conservatur per vim augmentativam et nutritivam in eadem anima existentem. Sed vis generativa habet effectum suum, non in eodem corpore, sed in alio, quia nihil est generativum sui ipsius. Et ideo vis generativa quodammodo appropinquat ad dignitatem animae sensitivae, quae habet operationem in res exteriores, licet excellentiori modo et universaliori, supremum enim inferioris naturae attingit id quod est infimum superioris, ut patet per Dionysium, in VII cap. de Div. Nom. Et ideo inter istas tres potentias finalior et principalior et perfectior est generativa, ut dicitur in II de anima, est enim rei iam perfectae facere alteram qualis ipsa est. Generativae autem deserviunt et augmentativa et nutritiva, augmentativae vero nutritiva.”

²⁹ *Ibid.*, q. 81, a. 1.

³⁰ *Ibid.*, a. 2.

³¹ *ST* I, q. 82, a. 1.

faculty, it is the natural inclination of that faculty that will enable us to determine the moral species of the object.

Identification of the Moral Object

The question we have presented ourselves with initially was whether the rational use of the generative faculty could include the adoption and implantation of an already conceived human embryo. On the face of it, there does not seem to be any “sin against nature” in proposing to use the generative faculty in this way. For the generative faculty, as we have just seen, is teleologically ordered to the mature offspring of a human kind. There is no doubt that this is indeed the aim of those who would adopt an embryo. However, we have not yet given either a full examination of the teleological order of the generative faculty or elucidated the natural law norms governing its use. It has been proposed by some that the intention to become pregnant by means of embryo transfer constitutes a violation of the marital covenant by which a husband and wife pledge themselves to become a father or mother only through each other.³² Others have suggested that embryo transfer constitutes a violation of the human good by substituting a technique for the conjugal union.³³ On the other hand, it has been argued that since conception and impregnation are logically and biologically distinct, to impregnate a woman with an already existing conceptus does not vitiate the use of the generative faculty.³⁴ Consequently, the only morally relevant considerations are the conditions for material cooperation in the grave evil of IVF.³⁵ In order to clarify the morally relevant issues involved in the question of “embryo adoption,” I propose to give a fuller analysis of the generative faculty and the order of reason governing its use.

As we saw above, the generative faculty is one that we share in common with all living things. Its formal object is the good, not of the individual, but of the species by means of producing a self-sufficient member of the species. Hence, the proper use and perfection of the generative faculty will be found in considering how its teleology serves human beings. In other words, on the hypothesis of the end of a mature human being, we will work toward the discovery of the means necessary to ensure that the end is achieved. In book 3 of his *Summa contra gentiles* (chs. 122–126), Aquinas runs

³² See, in Berg and Furton, *Human Embryo Adoption*: Tonti-Filippini, “The Embryo Rescue Debate,” 112; Nicanor Austriaco, “On the Catholic Vision of Conjugal Love and the Morality of Embryo Transfer,” 115–134; and Christopher Oleson, “The Nuptial Womb: On the Moral Significance of Being ‘with Child,’” 165–195. In Brakman and Weaver, *The Ethics of Embryo Adoption and the Catholic Tradition*, see Catherine Althaus, “Human Embryo Transfer and the Theology of the Body,” 43–67.

³³ Tracy Jamison, “Embryo Adoption and the Design of Human Nature: The Analogy between Artificial Insemination and Artificial Impregnation,” *National Catholic Bioethics Quarterly* 10.1 (Spring 2010): 111–122; and Mary Geach, “The Female Act of Allowing an Intromission of an Impregnating Kind,” in *Human Embryo Adoption*, ed. Berg and Furton, 251–271.

³⁴ Christopher Tollefsen, “Could Human Embryo Transfer Be Intrinsically Immoral?,” in *The Ethics of Embryo Adoption and the Catholic Tradition*, ed. Brakman and Weaver, 85–102.

³⁵ Furton, “Embryo Adoption Reconsidered,” 329–347.

this kind of analysis on the proper use of the generative faculty. The discussion of marriage and its properties follows on the heels of a discussion of divine law (ch. 114) and how it orders man to his ultimate end (ch. 115) by commanding that he love God (ch. 116) and his neighbor (ch. 117), and that he approach God with a right faith (ch. 118), referring sensible things to God as their principle (ch. 119) and offering *latria*—supreme worship to God alone (ch. 120). In chapter 121, Aquinas says that

just as man’s mind may be raised up to God by means of corporeal and sensible things, if one use them in a proper way to revere God, so, too, the improper use of them either completely distracts the mind from God, and so the end of the will is fixed in inferior things, or such abuse slows down the inclination of the mind toward God. . . . Therefore, man must be so ordered by divine law that his lower powers may be subject to reason, and his body to his soul, so that external things may subserve the needs of man.³⁶

It is in this context that Aquinas begins his discussion of what is required for the use of the generative faculty by divine law. We should not, however, think that this analysis is made on the basis of revealed divine law alone. In the course of his analysis, Aquinas argues first in terms of what can be known from reason and ends each section with citations from scripture showing that revealed divine law commands what we should already know to have been commanded by natural law. Chapter 129 completes the section of *Summa contra gentiles* book 3 dealing with the precepts of divine law by observing that “it is apparent that things prescribed by divine law are right, not only because they are put forth by law, but also because they are in accord with nature. . . . Therefore, it is clear that good and evil in human activities are based not only on the prescription of law, but also on the natural order.” Consequently, the analysis of what is required by divine law with respect to the use of the generative faculty in chapters 122 to 126 is nothing other than an analysis of the natural inclination to reproduction in order to discover the natural law principles governing its use.

Aquinas begins with a consideration of the argument that simple fornication is not a sin because no one suffers an injustice in a case of simple fornication. The scenario envisaged is that an unmarried woman who is not bound to any other man consents to copulate with some man: “Now, if a man performs the sexual act with her, and she is willing, he does not injure her, because she favors the action and she has control over her own body. Nor does he injure any other person, because she is understood to be under no other person’s control. So this does not seem to be a sin.”³⁷ Further, this scenario does not seem to involve an injustice to God, because it “does not appear contrary to man’s good.”³⁸ In responding to this argument, Aquinas appeals to the principle that “it is good for each person to attain his end.”³⁹ He notes that in order for the whole person to attain his end, he must direct the activities of

³⁶ Thomas Aquinas, *Summa contra gentiles*, 3.121. English translations of *SCG* are taken from Thomas Aquinas, *Summa Contra Gentiles, Book 3: Providence, Part II*, trans. Vernon J. Bourke (Notre Dame, IN: University of Notre Dame Press, 1975).

³⁷ *Ibid.*, ch. 122.

³⁸ *Ibid.*

³⁹ *Ibid.*

all his parts to their proper ends. The emission of semen, as an intentional act, is directed to the end of “the propagation of the species.”⁴⁰ In other words, the proper good of the activity of the generative faculty is directed not to the good of the individual whose activity it is, but to the good of the species. On the hypothesis of this end, it is necessary that the conditions for bringing about a mature member of the species be preserved. Hence, the intentional use of the generative power necessitates the conditions required to nourish the offspring and bring it to maturity. Further, this hypothetical necessity entails that the man act on the right kind of object so that he can order his act to its proper end. To direct the act of his generative faculty on anything other than a woman, and in such a way that “generation could not result,” constitutes a sin that is “contrary to nature,” for it cannot in principle be ordered to its proper end.⁴¹ Consequently, the norm governing the use of the generative faculty in the first place is that it be directed to suitable matter (e.g., a member of the opposite sex) and that it be the *kind* of act that can be ordered to the propagation of the species (e.g., vaginal intercourse).

In light of this principle, the use of the generative faculty by which a woman consents to be impregnated by means of a medical technique violates the first norm governing the use of the generative faculty, for she does not direct that use to a member of the opposite sex, nor does she engage in the kind of act that is suited to procreation. In fact, she does not intend to engage in a procreative act at all. What, then, does she intend? She certainly intends to become pregnant; consequently, she chooses to use her generative faculty for this purpose. But rather than directing the activity of her generative faculty to its proper object, that is, a male human being, she puts the faculty itself at the disposal of a technician who acts on her in the mode of a technical art. The technician uses the teleological order of her generative faculty in order to bring about a pregnancy. Hence, she consents to be used as material on which the technician works. In other words, she subordinates herself to the purposes of the technician who acts on her as the object of his technical skill.

But does this differ in any significant way from consenting to be acted on by a medical doctor? A doctor certainly works on his patient as the matter of his medical art. It seems, then, that the woman who puts her body at the disposal of the medical doctor is in the same position as the one who consents to embryo transfer. However, the medical art is directed to the restoration of health in the patient. The patient, then, consents not to be used by the doctor; rather, she consents to have the doctor work on her unhealthy organs in order to restore them to their proper teleological function. The medical art is concerned with restoring the proper teleological order of the disordered organs by repairing their defective material conditions. The doctor does this by means of various techniques and medications that assist the organs in repairing themselves. The health of the person, the proper functioning of her material parts, is the end in view. Consequently, medical techniques are always at the service of the patient; that is, they are subordinated to the good of the patient.

⁴⁰ Ibid.

⁴¹ Ibid.

Embryo transfer, on the other hand, does not restore health to the generative faculty, but rather directs it to its end of generation by means of a technique. The skill of the technician is directed to the introduction of a new order in the generative faculty itself. The healthy generative faculty stands in potency to the introduction of this order, but if our first principle governing the use of the generative faculty is rightly founded, the due order is not preserved by embryo transfer. The woman should direct the activity of her generative faculty to a man in virtue of the activity of his generative faculty; that is, the proper use of the generative faculty entails vaginal intercourse between a man and a woman. To put one's generative faculty at the disposal of a technician in virtue of his technical skill violates this order. Hence, I am in agreement with Tracy Jamison when he says that "the presence or absence of the procreative conjugal act itself is the fundamental moral criterion by which to judge whether to permit or exclude artificial impregnation."⁴² More importantly, however, this seems to be the thinking behind the principle enunciated by the CDF: "*The origin of human life has its authentic context in marriage and in the family, where it is generated through an act which expresses the reciprocal love between a man and a woman. Procreation which is truly responsible vis-à-vis the child to be born 'must be the fruit of marriage.'*"⁴³

What, then, are we to make of the claim that embryo adoption is an offense against the goods of marriage, as Tonti-Filippini maintains? The first principle governing the use of the generative faculty does not, of itself, indicate that the man to whom a woman directs her activity must be her husband. All that it requires is that the object of her activity should be a man. Further considerations, however, indicate that the proper object of her activity should not be just any man, but her husband. Aquinas continues his analysis in book 3, chapter 122, of *Summa contra gentiles* by looking more carefully at what is required for the rearing of offspring. He notes first that while some animals that are sexually reproduced do not need the care of their parents, others do. Of the latter, some need the care of one parent, and others need the care of both. Further, some need a longer period of care, whereas others need a shorter period. On the hypothesis of the end of a mature member of the species, it is requisite that among certain kinds of animals, the male be present to assist the female in rearing the offspring. He contrasts the mating habits of dogs, which separate immediately after copulation, since the female alone is sufficient for the rearing of pups, with certain kinds of birds that remain together for some time after copulation so that the female can incubate the eggs and keep the chicks warm while the male provides nourishment for both the female and their young.

Human beings, however, are animals whose offspring require a very long period of care, which is best given by both parents because of the need the child has not only of the physical supports for the perfection of his body, but also for the formation of his properly human faculties both by instruction and correction.⁴⁴ Hence, it is natural

⁴² Jamison, "Embryo Adoption and the Design of Human Nature," 114.

⁴³ CDF, *Dignitas personae*, 6, original emphasis.

⁴⁴ The accidental possibility that a woman can raise a child on her own, however, does not constitute an argument against the necessity of marriage: "Nor, indeed, is the fact that a

to human beings to form male–female partnerships of long duration for the good of the offspring. This partnership is nothing other than the society of matrimony.⁴⁵ This matrimonial society is effected by the consent of the parents, which is the precondition for the legitimate use of the generative faculty. Matrimonial consent is ordered to carnal union and so gives each spouse the exclusive right to the use of the other’s generative faculty. The object of consent is the matrimonial bond itself, but this consent in turn gives each spouse power over the generative faculty of the other.⁴⁶ Hence, “the bond which comes to be between the spouses gives to them the objective and inalienable exclusive right that each become a father and mother only through each other.”⁴⁷

Consequently, for a woman to choose to be impregnated by means of embryo transfer violates the order that should obtain in her use of her generative faculty, whereby she becomes a mother only through her husband, and violates her husband’s exclusive right to act on her generative faculty. Further, in light of the first principle enunciated above, the husband does not have the right to act on her generative faculty in any manner whatsoever, but only in virtue of his own generative activity. Even if presented with the unlikely scenario where the technician who implants the embryo is the woman’s husband, he does not thereby act on her in his capacity as husband,

woman may be able by means of her own wealth to care for the child by herself an obstacle to this argument. For natural rectitude in human acts is not dependent on things accidentally possible in the case of one individual, but, rather, on those conditions which accompany the entire species.” *Summa contra gentiles*, 3.122.

⁴⁵ Ibid.: “Again, we must consider that in the human species offspring require not only nourishment for the body, as in the case of other animals, but also education for the soul. For other animals naturally possess their own kinds of prudence whereby they are enabled to take care of themselves. But a man lives by reason, which he must develop by lengthy, temporal experience so that he may achieve prudence. Hence, children must be instructed by parents who are already experienced people. Nor are they able to receive such instruction as soon as they are born, but after a long time, and especially after they have reached the age of discretion. Moreover, a long time is needed for this instruction. Then, too, because of the impulsion of the passions, through which prudent judgment is vitiated, they require not merely instruction but correction. Now, a woman alone is not adequate to this task; rather, this demands the work of a husband, in whom reason is more developed for giving instruction and strength is more available for giving punishment. Therefore, in the human species, it is not enough, as in the case of birds, to devote a small amount of time to bringing up offspring, for a long period of life is required. Hence, since among all animals it is necessary for male and female to remain together as long as the work of the father is needed by the offspring, it is natural to the human being for the man to establish a lasting association with a designated woman, over no short period of time. Now, we call this society matrimony. Therefore, matrimony is natural for man, and promiscuous performance of the sexual act, outside matrimony, is contrary to man’s good. For this reason, it must be a sin.”

⁴⁶ *ST III*, suppl., q. 48, a. 1; and q. 64, a. 1. Although Aquinas refers only to the power over carnal intercourse in the prior article, when treating the rendering of the marriage debt in the latter article, he clearly states that the spouses, by their matrimonial consent, have power over each other’s generative power and not just the act of intercourse itself.

⁴⁷ CDF, *Donum vitae*, II.A.2.

but as a technician who uses the generative faculty of his wife as the object of his technical skill. The embryo transfer could not in this scenario be considered analogous to the marital act, for the husband does not direct his generative faculty to the begetting of offspring.

In summary, embryo transfer violates the order that should govern the use of the generative faculty. The active use of the generative faculty should be directed to sexual intercourse with a member of the opposite sex who is one's spouse. Further, the violation of this due order constitutes a serious sin because it is opposed to the good of man. Aquinas concludes chapter 122 with the judgment that actively directing the use of the generative faculty to an improper object is second in gravity to homicide: "Hence, after the sin of homicide whereby a human nature already in existence is destroyed, this type of sin appears to take next place, for by it the generation of human nature is precluded."⁴⁸ His primary concern in this section is to establish that the "inordinate emission of semen" is sinful whereas "the emission of any other superfluous matter" is not. But the reason underlying this judgment is that the active use of the generative faculty should be directed to the proper object (i.e., a member of the opposite sex) within the context of marriage, which ensures the education of the offspring, and not some outdated view about the ontological status of the semen (e.g., a homuncular theory) as parodied in the Monty Python song "Every Sperm Is Sacred."

Consequently, although embryo transfer is a sin that has a sexual nature, it is not therefore a sin of lust. If it is contrary to the virtue of temperance, it is because it entails a disordered desire for a child. Primarily, however, it is a violation of justice; the deliberate inordinateness of the use of the generative faculty offends against a common good, namely, the good of the species. In refusing to order oneself to the good of the species, one takes oneself out of the order to the intrinsic good of the universe, which is itself ordered to the separate common good of the universe, namely, God. Hence, to use the generative faculty in a disordered way is a refusal to render to God his due by subordinating ourselves to the order He has established in nature. Moreover, the woman who consents to embryo transfer fails to render to her husband what is his due, namely, the exclusive rights over her generative faculty. Also, the technician who does the procedure fails to order his action to the good of the woman and reduces her to an object of use while violating the husband's exclusive right to act on his wife's generative faculty. Finally, there is an offense against the child to be transferred, who has "the right . . . to be conceived and to be born within marriage and from marriage."⁴⁹

Objections and Replies

We are now in a position to take on objections to those who reject embryo adoption as a licit option.

Adoption Makes Spouses Parents through Each Other

One way of arguing in favor of embryo adoption has been to focus on the way husbands and wives become fathers and mothers, not through the use of the

⁴⁸ Aquinas, *Summa contra gentiles*, 3.122.

⁴⁹ CDF, *Donum vitae*, I.6.

generative faculty, but by means of adoption. John Grabowski and Christopher Gross state the case compellingly: “Surely couples who adopt children whom they did not conceive through a conjugal act and whom the women did not carry through pregnancy become fathers and mothers to these children. And if this is true of infants and adolescents, why is it not also true of embryos ‘who have the dignity of persons’ albeit at an earlier stage of development?”⁵⁰ Those who distinguish between adoptive and biological parents “do so apart from any theology or definition of parenthood. If, as Germain Grisez suggests, parenthood is ‘far more a moral than a biological relationship’ and if ‘its essence is not so much in begetting and giving birth as in readiness to accept the gift of life, commitment to nurture it, and faithful fulfillment of that commitment through many years,’ then any attempt to draw a distinction between adoptive and biological parents who care for their children is not only invalid but also misleading.”⁵¹ They emphasize the covenantal nature of adoption, indicating that the “relationships that are formed through adoption are equal to or transcend biological ties,” and so “once [heterologous embryo transfer] is considered in light of the Christian tradition’s theology of adoption, the biological aspects of the procedure become much less relevant, and it becomes clear that embryo adoption is at least potentially a morally licit and even praiseworthy practice—and not merely in the intentions of those who engage in it.”⁵²

Christopher Tollefsen directs us to consider divine adoption as the model that will answer the questions of “what, normatively, is [adoption] to be, and, when it is rightly pursued, what is the ontological relationship that thereby obtains between parents and children through adoption?”⁵³ He emphasizes the *gratuitous* nature of adoption undertaken as a *response to God’s call*, which then changes the adoptee by giving him *two identities* and *rescuing* him from potential harm. In light of these considerations, he concludes that, if pursued with the correct motives, “embryo adoption would be, like both conventional adoption and procreation in the context of marital sexuality, normatively a matter of gift as expression and realization of marital love.”⁵⁴

Edward Furton argues that marital intimacy is not violated in embryo transfer because it is a clinical action akin to a routine gynecological examination. The woman “is not opening her reproductive tract to another person. . . . She is instead opening her maternal potential to another human being who already has a complete genetic identity.”⁵⁵ Consequently, “the fact that the embryo is not one’s own must be morally neutral, in fact, for it is clearly an extrinsic attribute of the child to be adopted. . . . If we say that the very fact that the child is not one’s own makes embryo adoption

⁵⁰ John S. Grabowski and Christopher Gross, “*Dignitatis personae* and the Adoption of Frozen Embryos: A New Chill Factor?,” *National Catholic Bioethics Quarterly* 10.2 (Summer 2010): 317.

⁵¹ *Ibid.*, 317–318.

⁵² *Ibid.*, 321.

⁵³ Christopher Tollefsen, “Divine, Human, and Embryo Adoption: Some Criticisms of *Dignitatis personae*,” *National Catholic Bioethics Quarterly* 10.1 (Spring 2010): 78.

⁵⁴ *Ibid.*, 84.

⁵⁵ Furton, “Embryo Adoption Reconsidered,” 339.

wrong, then we are also saying that some attribute that attaches to the child from the outside makes it unworthy of our efforts to preserve it. Whether a child is one's own or another's has no bearing on the inviolable dignity of the child's life."⁵⁶

In responding to this line of argumentation, I would like to suggest that the distinction between biological and adoptive parenthood, far from being "invalid" or "misleading," is in fact fundamental for understanding not only human paternity but also the revelation of God as Father, *ex quo omnis paternitas in caelis et in terra nominatur* ("from whom every family in heaven and on earth is named") (Eph. 3:15). Unfortunately, the distinctions that have been made by opponents of embryo adoption in response to arguments such as Tollefsen's have been improperly formulated. Rev. Tadeusz Pacholczyk suggests that to "understand the fissure in parenthood that embryo adoption effects, it may be helpful to dissociate motherhood into three categories: *genetic*, *gestational*, and *social* motherhood."⁵⁷ He exploits this division to show that motherhood in its full sense includes all three elements, whereas other ways of being a mother might not include all three. Further, for a woman to receive an embryo into her womb that is not her own is a form of surrogacy "understood broadly,"⁵⁸ and so falls under the CDF's approbation of surrogacy.

This approach, however, has certain problems. First, surrogacy, in the final analysis, *pace* Pacholczyk, is defined by the CDF in terms of the original intention to surrender the child to another party once it has been born, as we saw above. Second, genetic, gestational, and social motherhood admit of various permutations, making the comparison between the various forms it can take overly burdensome. For instance, although in normal motherhood and homologous IVF and embryo transfer, the three coincide, in heterologous IVF and embryo transfer it is also possible for all three to coincide provided that the ovum used is that of the mother. The distinction, then, does not enable us to see what is wrong with embryo transfer as such. Further, this division is not very helpful in determining the difference between social motherhood proceeding from "natural" motherhood and that proceeding from adoption. Third, genetic motherhood and gestational motherhood have more to do with some attribute of the child, namely, its material constitution and location, whereas social motherhood has more to do with the social relationship that obtains between mother and child. Hence, Pacholczyk's division does not adequately divide the generic notion of motherhood into its various species.

In order to have a true comparison between kinds of motherhood, we must divide the generic notion of motherhood, or rather parenthood, into its various species. To make a proper division, the dividing parts must be less universal, exhaustive, formally opposed one to another, and made on the same basis.⁵⁹ Now, since parenthood is effected by an activity on the part of the parent, the basis of the division should be the

⁵⁶ *Ibid.*

⁵⁷ Tadeusz Pacholczyk, "Moral Contraindications to Embryo Adoption," in *Human Embryo Adoption*, ed. Berg and Furton, 46, original emphasis.

⁵⁸ *Ibid.*, 48.

⁵⁹ John Oesterle, *Logic: The Art of Defining and Reasoning*, 2nd ed. (Upper Saddle River, NJ: Prentice Hall, 1963), 49–53.

efficient cause of “filiation,” that is, that which makes a child to be one’s own. In this way, human parenthood can be brought into direct comparison with God’s fatherhood, and we will be able to highlight the similarities and differences between the two. This is in fact the way in which Aquinas proceeds in defining adoption and determining the differences between parenthood by adoption and “natural” parenthood.

In his *Commentary on the Sentences*, book 4, distinction 42, question 2, Aquinas determines the essence of adoption. Adoption is there defined as “the legitimate assumption of a person not of one’s family as a son, grandson, or heir.”⁶⁰ In his defense of this definition, he distinguishes between filiation proceeding from nature, on the one hand, and from art, on the other: “I respond, it ought to be said that art imitates nature and supplies for a defect of nature in those things in which nature is defective; whence just as someone produces a son by natural generation, so also can someone, by positive law, which is the art of the just and good, assume someone as a son to the likeness of a natural son, and to supply for the defect of the aforesaid sons for which sake especially adoption was introduced.”⁶¹

Hence, the first division of parenthood should be on the basis of nature versus art. Nature is understood as an internal principle of motion and rest; hence, *natural generation* is the first category. In contrast, art is understood as the principle governing things to be done according to positive law (governed by prudence); hence, *legal generation* is the second category. In comparing the two and clarifying the differences, Aquinas focuses on the notion of generation as a kind of motion. Every motion has a mover and a moved. Although a motion is one in being, it is diverse in relation; it is from the mover, but in the moved. Consequently, the motion of generation, although itself one, gives rise to the parent–child relation. The mover is the parent, the moved is the child: “Therefore, just as natural generation has a term to which, namely the form which is the end of generation, and a term from which, namely the contrary form, so also legal generation has a term to which, son or grandson, and a term from which, a person not of one’s family.”⁶² Hence, the *term from which*—the principles of nature on the one hand, an already constituted nature on the other—is the primary difference between natural generation and legal generation.

But there is a difference also in the *term to which*. In the case of natural generation, it is the form of a new human being. This new person, by nature, has a right to

⁶⁰ Thomas Aquinas, *Scriptum super libros sententiarum magistri Petri Lombardi Episcopi Parisiensis*, editio nova, eds. P. P. Mandonnet and M. F. Moos (Paris: P. Lethielleux, 1929), 4.42.2.1: “Adoptio enim est alicujus extraneae personae in filium vel nepotem, vel deinceps, legitima assumptio.”

⁶¹ Ibid.: “Respondeo dicendum, quod ars imitatur naturam, et supplet defectum naturae in illis in quibus natura deficit; unde sicut per naturalem generationem aliquis filium producit, ita per jus positivum, quod est ars aequi et boni potest aliquis sibi assumere aliquem in filium ad similitudinem filii naturalis, et ad supplendum filiorum praedictorum defectum, propter quod praecipue adoptatio est introducta.”

⁶² Ibid.: “Sicut ergo naturalis generatio habet terminum ad quem, scilicet formam quae est finis generationis, et terminum a quo, scilicet formam contrariam; ita generatio legalis habet terminum ad quem, filium vel nepotem; terminum a quo, personam extraneam.”

a share in his parents' goods. He has, then, the right to be nourished and educated by his parents, and the right to be an heir to the family's material goods. The adopted child, on the other hand, does not have a natural right, but rather the legal right, to be educated and nourished by the parents and to be an heir to the family's material goods. Quite clearly, then, embryo adoption, even though it entails gestation on the part of the woman, must be placed in the category of legal generation because it does not have a contrary nature as its *term from which*. Consequently, whether the adoption is effected before the child's birth or after, the adopted child is directed to the same end as the child who is generated by nature, namely, the child becomes an heir to the family's goods and shares in the society of the family.

In light of these considerations, we may address Tollefsen's treatment of divine adoption. It is clear that the inner life of the Trinity is analogous to natural generation. God the Father, in eternally begetting the Son, is the subject of a real relation of paternity. As human parents, by their own activity, beget a child who shares their nature, so God, by his immanent activity, begets a Son who shares his nature. Legal adoption, on the other hand, is analogous to divine adoption. For God, in adopting us as his children, makes us heirs and shares with us the good of his being through the beatific vision. Now, as rational creatures, we can be considered the children of God in two ways: by virtue of creation and by virtue of grace. We are children by virtue of creation because we are created in God's image and children by grace by becoming heirs:

It pertains to the essence of filiation that the son is produced in the likeness of the species of the generator himself. But man, insofar as he is produced in a sharing of intellect by creation, is produced as it were in the likeness of the species of God himself because the highest of those things according to which a created nature participates in the likeness of the uncreated nature is intellectuality, and therefore only the rational creature is said to be to the image (of God) . . . whence only the rational creature attains the name of filiation by creation. But adoption, as has been said, requires that the one adopted acquires the right to the heredity of the adopter. But the heredity of God himself is his very beatitude, of which only the rational creature is capable. Nor is this acquired from creation itself, but from the gift of the Holy Spirit as has been said.⁶³

We can see, then, that there is a great similarity between human adoption and divine adoption. The *term from which* is a person who is not of one's family. In human adoption, it is another human being who is equal to his adoptive parents in nature, whereas in divine adoption, it is a creature who does not belong to the divine family

⁶³ Ibid., 3.10.2.2.1: "... de ratione filiationis est ut filius producat in similitudinem speciei ipsius generantis. Homo autem in quantum per creationem producitur in participationem intellectus, producitur quasi in similitudinem speciei ipsius Dei: quia ultimum eorum secundum quae natura creata participat similitudinem naturae increatae, est intellectualitas; et ideo sola rationalis creatura dicitur ad imaginem, ut in 2 Lib., dist. 16, dictum est, unde sola rationalis creatura per creationem filiationis nomen adipiscitur. Sed adoptio, ut dictum est, requirit ut adoptato jus acquiratur in hereditatem adoptantis. Hereditas autem ipsius Dei est ipsa sua beatitudo, cujus non est capax nisi rationalis creatura: nec ipsi acquiritur ex ipsa creatione; sed ex dono spiritus sancti, ut dictum est."

of the Trinity in virtue of creation. The *term to which* is the right to the heredity of the parents: in legal adoption this is the riches of the family, whereas in divine adoption it is the riches of the Godhead:

It ought to be said . . . that adoption is transferred to the divine from a likeness of human acts. For a man is said to adopt one as a son according to which he gives (the son), out of good will, the right to secure his heredity to which he is not adequate by nature (i.e., natural law). But the heredity of a man is said to be that by which a man is wealthy; but that by which God is wealthy is his enjoyment of himself since he is blessed on account of this, and so this is his heredity. Whence insofar as he gives to men, who are not able to attain to that enjoyment by his natural powers, the grace by which man can merit that beatitude so that thus the right to that heredity will be adequate to him, according to this is he said to adopt someone as a son.⁶⁴

As human adoption is effected by human law, so divine adoption is effected by divine law, that is, the law of grace, the gift of the Spirit: *Non enim accepistis spiritum servitutis iterum in timore, sed accepistis Spiritum adoptionis filiorum in quo clamamus, Abba, Pater* (“For you have not received a spirit of slavery leading to fear again, but you have received a spirit of adoption as sons by which we cry out, ‘Abba! Father!’”) (Rom. 8:15, NASB).

Having highlighted the similarities and differences between legal generation and natural generation, we are in a position to determine the ontological status of the relationship between natural parents and their children, on the one hand, and adoptive parents and their children on the other. Aquinas holds that there is a difference here because the *cause* of filiation is different in each case:

For the unity of relation or its plurality is not considered according to its termini, but according to its cause or subject. For if it is considered according to its termini, it would be necessary that every man would have two filiations in himself, one by which he is referred to his father and another by which he is referred to his mother. But to those considering the case rightly, it is clear that each and every one is referred to his father and mother by the same relation on account of the unity of the cause. For a man is born from the father and mother by the same nativity, whence he is referred to each by the same relation. . . . But it sometimes happens that someone has a relation to several things according to diverse causes, nevertheless of the same species, as when someone is the father of diverse sons according to diverse acts of generation. Whence paternity cannot differ in species since the acts of generation are of the same species. And since several forms of the same species cannot be in the same subject at one time, it is not possible that there be several paternities in he who is the father of several sons by natural generation. But in a different

⁶⁴ Ibid.: “Respondeo dicendum . . . quod adoptatio transfertur ad divina ex similitudine humanorum. Homo enim dicitur aliquem in filium adoptare, secundum quod ex gratia dat jus percipiendae hereditatis suae, cui per naturam non competit. Hereditas autem hominis dicitur illa qua homo dives est; id autem quo Deus dives est, est perfructio sui ipsius, quia ex hoc beatus est, et ita haec est hereditas ejus; unde inquantum hominibus, qui ex naturalibus ad illam fruitionem pervenire non possunt, dat gratiam per quam homo illam beatitudinem meretur, ut sic ei competat jus in hereditate illa, secundum hoc dicitur aliquem in filium adoptare.”

way, there could be, if he were the father of one by natural generation and of another by adoption.⁶⁵

In other words, although legal generation and natural generation differ in definition because of the *term from which* (i.e., whether the child is one's own or not), the relation that is established in the parent is in virtue of what the parent does in order to cause filiation (i.e., the basis or foundation of the relation). The foundation or cause of the relationship determines the nature of the relationship. Consequently, there is a difference in the parenthood one has by natural generation and that which one has by adoption: they are specifically different parenthoods. And since the specific difference is due to the agent of generation in virtue of the kind of act he performs, natural generation establishes a real relation by proceeding from a natural motion, whereas adoption establishes a relation of reason by proceeding from law as an ordinance of reason. The child by natural generation is the subject of a real relation to his parents; the adopted child is the subject of a relation of reason to his adopted parents. We can see that this is necessarily the case, since the adopted child retains a real relation to his natural parents and so he could not possibly be the subject of an additional real relation to his adoptive parents. However, the same reasoning does not hold in the case of divine adoption; creatures are the subjects of real relations to God, but there is no real relation of God to creatures. The only real relations in God are between the divine persons.⁶⁶ Hence, the relation that is created by divine adoption exists only in his adopted children, who become heirs of the divine riches. We give God the name of Father by creation and adoption, then, by referring the real relation that exists in us to its cause; the relation of paternity exists in God only as a relation of reason.⁶⁷

The charge of the objectors that those who distinguish between adoptive and biological parenthood do not “do so apart from any theology or definition of parenthood”⁶⁸ is not well founded. As we have shown, there are significant differences between the *term from which* generation proceeds, the acts in virtue of which the relation is established, and the ontological status of the relationship itself. We come to understand divine adoption by means of knowing what human adoption is directed to, namely, a share in the inheritance of the parents. Comparing human adoption to

⁶⁵ *ST* III, q. 35, a. 5: “Unitas enim relationis vel eius pluralitas non attenditur secundum terminos, sed secundum causam vel subiectum. Si enim secundum terminos attenditur, oporteret quod quilibet homo in se duas filiationes haberet, unam qua refertur ad patrem, et aliam qua refertur ad matrem. Sed recte consideranti apparet eadem relatione referri unumquemque ad suum patrem et matrem, propter unitatem causae. Eadem enim nativitate homo nascitur ex patre et matre, unde eadem relatione ad utrumque refertur. . . . Contingit autem quandoque quod aliquis habet relationem ad plures secundum diversas causas, eiusdem tamen speciei, sicut cum aliquis est pater diversorum filiorum secundum diversos generationis actus. Unde paternitas non potest specie differre, cum actus generationum sint iidem specie. Et quia plures formae eiusdem speciei non possunt simul inesse eidem subiecto, non est possibile quod sint plures paternitates in eo qui est pater plurium filiorum generatione naturali. Secus autem esset si esset pater unius generatione naturali, et alterius per adoptionem.”

⁶⁶ *ST* I, q. 28, a. 1 and 3.

⁶⁷ *Ibid.*, q. 13, a. 7.

⁶⁸ Grabowski and Gross, “*Dignitatis Personae* and the Adoption of Frozen Embryos,” 317.

divine adoption enables us to understand not so much what human adoption “is and should be,” but rather what divine adoption “is and should be.”

Embryo Transfer Is Morally Neutral

Although “relationships that are formed through adoption are equal to or transcend biological ties,”⁶⁹ in light of the same *term to which* both are directed, this fact alone does not amount to much in the argument over the moral liceity of embryo adoption. If embryo transfer itself is morally neutral, then I grant that there is no significant difference between prenatal and postnatal adoption, as both proceed from the same *term from which* (child not one’s own) to the same *term to which* (share in heredity) by means of the same legal act which establishes the relationship of paternity. The fundamental question is whether it is licit for a woman to “open her maternal potential” to a child not her own *by means of using her generative faculty*. Hence, the most relevant objection to the position I have proposed is that which argues that embryo transfer is in fact morally neutral.

Those who argue that embryo transfer is in itself morally neutral rely on a rigorous distinction between *procreation* and *embryo adoption*. For instance, Grabowski and Gross conclude, “Clearly, cryopreserved embryos are human lives which have already been conceived. Given this, we have argued that embryo adoption cannot be considered ‘procreation’ or simply equated with it.”⁷⁰ The reason for this distinction is that “it is not clear how such a procedure could be called ‘procreation,’ since the term typically refers to the coming into being of new human life through the joining of male and female gametes. . . . Therefore, embryo adoption might correctly be called heterologous embryo transfer, but this cannot be understood to be equivalent to ‘heterologous procreation.’”⁷¹ This is significant, for in *Dignitas personae*, the “primary argument against heterologous and homologous artificial insemination is that they ‘substitute for the conjugal act’ in generating new human life,” whereas, “in the case of cryopreserved embryos, such life has already been generated even if not through a conjugal act.”⁷²

Tollefsen emphasizes that the act of generation (procreation) includes a “one-flesh union” between husband and wife, conspicuously absent in the fact of pregnancy: “Pregnancy, and how it proceeds, does not enter *at all* into an account of what, biologically, renders two individuals one, biologically, in performing a generative type of act.” He later concludes “that making pregnant is not a function of the sexual act contributing to its unitive significance. . . . Procreation, insofar as it is the fruit of mutual self-donation and not to be separated from that self-donation, does not include, or extend to, the stages of pregnancy consequent upon the generation of a child.”⁷³ Further, to speak as if impregnation is something that the man does “encourages, and

⁶⁹ Ibid., 321.

⁷⁰ Ibid., 316.

⁷¹ Ibid., 315.

⁷² Ibid., note 29.

⁷³ Tollefsen, “Could Human Embryo Transfer Be Intrinsically Immoral?,” 93, 94, original emphasis.

is perhaps a holdover from, a false biology, of an Aristotelian sort, in which the man was the source of the active power, and the woman the source of the mere matter, or the biology that developed after the modern discovery of sperm.”⁷⁴ Consequently, he insists on a sharp distinction between *conception* or *fertilization* and *pregnancy* such that we can rightly view the man as the cause of conception, but not of pregnancy:

At the very point, then, when the woman, on the most conservative (but, I think, still somewhat stipulative) definition, of pregnancy becomes pregnant, the activity of the man and the woman has become superseded by the self-directed activity of the new entity, the embryonic human being. The generative causality of the man and woman—the causality effected by the man’s sperm and the woman’s ovum—is at an end precisely because generation is over, and a being with its own biological causality now exists. . . . If anything makes the woman pregnant, then, it might seem that it is the new child inside her.⁷⁵

He concludes, on this basis, that “to provide womb-room” for an abandoned embryo does not violate the marriage good. It is wrong to generate a child outside of marriage and apart from the one-flesh union of the marriage act, but it is not wrong to become pregnant apart from the marriage act.

Taking an approach radically different from that of Tollefsen, Elizabeth Rex, in a recent issue of *National Catholic Bioethics Quarterly*, argues that embryo transfer does not make the adoptive mother pregnant at all, and so is not ordered to pregnancy apart from the marriage act. Based on the current medical definitions of impregnation as the insemination or fertilization of the ovum, she determines that a woman, that is, the egg donor, becomes pregnant prior to embryo transfer:

Therefore, since impregnation and motherhood both occur *prior* to embryo transfer, then embryo transfer cannot be “per se ordered to the motherhood of the woman.” Likewise, in the case of an adoptive mother and an adopted frozen embryo, both the impregnation and the legal adoption of the frozen embryo by the adoptive parents take place *prior* to the transfer of the adopted embryonic child into the womb of the adoptive mother. Therefore, the adoptive parents are already the legally responsible parents of their legally adopted child(ren) *before* the embryo transfer takes place. Thus, embryo transfer is not ordered per se to “impregnation . . . outside of the bond of marriage,” but rather to saving the life of a legally adopted child by the legally responsible adoptive parents within the sacred bond of their marriage and marital life.⁷⁶

By arguing in this vein, Rex contradicts Grabowski, Gross, and Tollefsen by equating pregnancy and conception/procreation, but fundamentally agrees with them by arguing that pregnancy itself, thus understood, occurs prior to embryo transfer. Consequently, there is on the one hand a merely semantic difference between Rex’s position and that of the others: Rex considers it immoral to impregnate a woman apart from the marriage act, but denies that embryo transfer impregnates a woman,

⁷⁴ Ibid., 95.

⁷⁵ Ibid., 97.

⁷⁶ Elizabeth B. Rex, “IVF, Embryo Transfer, and Embryo Adoption: A Response to Repenshek and Delaquil,” *National Catholic Bioethics Quarterly* 14.2 (Summer 2014): 232, original emphasis.

whereas the others consider it immoral to procreate or conceive apart from the marriage act, but affirm that embryo transfer impregnates a woman. On the other hand, there is a substantive difference in that Rex denies, while the others affirm, that a woman who has an embryo transferred into her womb thereby becomes the mother of that embryo.

I am willing to grant certain of these distinctions. For instance, it is quite right to say that the natural motion of generation achieves its term at the moment of conception, for at the moment of conception there exists a new substance, a matter–form composite, which is specifically human. Consequently, the parent–child relations are established at the moment of conception, and not at some point later on. Moreover, at this point the natural motion of generation has ceased, and the self-development of the organism, sustained by the nurturing environment of the mother’s womb, has begun. In the case that procreation or conception occurs *in vitro*, we can rightly say that procreation has indeed taken place, and that embryo transfer does not constitute a procreative act.⁷⁷

Further, in agreement with Rex, and in conformity with what was said above concerning the generation of the legal relation of adoptive parenthood, that legal relation will exist prior to embryo transfer.⁷⁸ However, Rex’s suggestion that pregnancy is simply the result of fertilization is untenable, for it does not take into account the fact that only some animals that reproduce sexually are said to “be pregnant.” For instance, we do not say that female fish “get pregnant,” for they do not gestate their young in a uterus.⁷⁹ Likewise, we do not say that hens “get pregnant,” for they do not incubate their laid eggs in a special interior organ. Pregnancy is a term that we generally apply to animals that gestate their young within their bodies, such as placental mammals and marsupials.⁸⁰ Rex is unfortunately misled by a too rigid adherence to a text-book definition of the term, which emphasizes the efficient cause of pregnancy.

⁷⁷ I might add that it is not exactly clear to me in this case whether the relation of parenthood that comes about in the case of IVF is univocally the same as the relation of parenthood that is established in natural conception, for the act which is the basis of the relation differs; natural coitus, an act of the man and the woman, is the basis of the relation in natural conception, but in IVF the man and the woman do not act in a generative manner at all. Ejaculating into a cup is not *per se* ordered to procreation, nor is having ova removed by laparoscopy, even if there exists the further intention to have those sperm and eggs joined *in vitro*. Conception *in vitro* is accomplished by the act of the medical technician, not by the act of the egg and sperm donors. However, it can at least be said that the egg and sperm donor have a real causal relation to the child, and this is generally taken to suffice for the natural parent–child relation between the conceptus and its genetically related progenitors.

⁷⁸ I am here assuming the inadequacy of the current legal structure governing the transfer of frozen embryos to adoptive parents, which considers it not as adoption but as property transfer.

⁷⁹ This is the case for most fish species, although there are viviparous fish, such as guppies, that incubate their eggs internally and give birth to live offspring, and ovoviviparous fish that incubate their eggs internally for a time.

⁸⁰ Monotremes, such as the duck-billed platypus, like ovoviviparous fish, incubate their eggs internally for a time.

In this restrictive definition, “impregnation” is rightly defined as fertilization of the ovum, only if we assume that we are dealing with an animal that consequently gestates that conceptus interiorly. Rex is correct, however, to point out that pregnancy follows from the fertilization of the ovum, and so perhaps even on her view it can also be said that the embryo itself is the best candidate for being the proximate agent effecting pregnancy, for when the embryo comes to be, the mother becomes pregnant.

The foregoing considerations, however, fail to say anything meaningful about the order of reason that ought to be observed in the use of the generative faculty, limiting themselves to examining the mechanics of procreation in their natural species. Certainly, each of the organs of the reproductive system is susceptible of separate analysis in terms of its proper function, but each of those proper functions is coordinated in a single order to the production of live offspring. The principle of that single order is nothing other than the end of the generative faculty itself, which is also the principle of operation of the various acts of the reproductive organs. Consequently, pregnancy, or the nurturing of the conceptus in the womb, is an activity of the woman’s generative faculty. But the fundamental question that determines whether embryo transfer is licit is whether it constitutes a licit use of the generative faculty, which is not determined only in terms of whether it is in fact fulfilling its natural and proper teleological functions. Even though the woman’s generative faculty is constituted such that it can nourish a developing embryo, it makes no small difference, from the standpoint of ethics, how the embryo got there in the first place.

If my analysis above is correct, the only licit use of the generative faculty is to direct its rationally orderable activity (coitus) to its proper object, namely, one’s spouse. The husband, by depositing his semen in his wife’s vagina, orders her generative faculty to achieve its natural end. For a technician to introduce that order by embryo transfer would be a usurpation of the husband’s exclusive right to order his wife’s generative faculty to its proper end. The reason for this is that although it is possible to distinguish between fertilization and pregnancy as two separate kinds of activity, it is not possible to assign them to two separate faculties. The uterus is at the service of the generative faculty, for the faculty’s activities encompass not only generation, but also the sustaining of the nascent life in the womb up to the moment of birth. Hence, pregnancy is itself an activity of the generative faculty as directed to the end of a mature human being. Consequently, the moral species of embryo transfer will be the same as that of directing the activity of one’s generative faculty to someone who is not one’s spouse. I conclude, then, that embryo transfer is in itself morally evil.