

# Human Dignity and the Destiny of Cryopreserved Embryos: A Catholic Analysis

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*Editor's Note: We will regularly feature papers by graduate students in health care ethics as a way of encouraging scholarship and supporting future ethicists. This student essay is from Jacob Harrison who recently completed a master of arts degree at Aquinas Institute of Theology and has begun a Ph.D. program in health care ethics at Saint Louis University.*

Presently there is a moral dilemma facing the Catholic Church with regards to cryopreserved embryos. The Magisterium has clearly held that cryopreservation is morally illicit because it violates the human dignity proper to all embryos.<sup>2</sup> Furthermore, *Dignitas Personae* states, “there seems to be no morally licit solution regarding the human destiny of the thousands and thousands of ‘frozen’ embryos which are and remain the subjects of essential rights and should therefore be protected by law as

human persons.”<sup>3</sup> This creates a dilemma. We acknowledge the moral challenges in dealing with cryopreserved embryos but, recognizing the dignity of these cryopreserved embryos, we must ask: what is morally permissible regarding the hundreds of thousands of cryopreserved embryos that exist today?<sup>4</sup>

The use of embryos for scientific research explicitly violates the dignity of the embryo and is therefore not an option I will

consider. However, a few alternatives exist for cryopreserved embryos that are worth examining. One argument is to keep embryos frozen until we can bring them to term or until the embryos are no longer viable, at which point they would be discarded.<sup>5</sup> A second approach calls for ending the frozen state of these embryos now, allowing for a natural death.<sup>6</sup> One further option involves maintaining the cryopreserved embryos until they can be transferred into the wombs of women, via heterologous embryo transfer (henceforth referred to as HET), who either adopt the child or offer their wombs to carry the child to term.<sup>7</sup> I will argue that embryo adoption, under specific circumstances, can be morally permissible but that it could never address the vast number of cryopreserved embryos. Therefore, the best course of action is to allow cryopreserved embryos that do not have a reasonable chance of being brought to term, to be thawed and allowed the dignity of a natural death.

### HET and Embryo Adoption

There is a general consensus among Catholic moral theologians and ethicists that creating, exploiting, and/or destroying embryos is morally illicit, but the possibility

of embryo adoption as a means to save cryopreserved embryos remains a highly debated topic.<sup>8</sup> Couples pursuing embryo adoption have laudable intentions and there are various arguments cited in favor and against the moral permissibility of embryo adoption.<sup>9</sup> In order to properly assess these arguments, it is necessary to briefly examine three guiding principles from the Catholic tradition, namely, the human dignity of the embryo, the marital sexual act, and the nexus between said act and procreation. These principles are typically cited to argue that neither HET nor embryo adoption are morally permissible. However, it would seem possible to argue that, under specific conditions, embryo adoption may be morally licit.

Among the three foundational principles that provide a moral framework for the discussion of embryo adoption in the Catholic tradition, the first is the human dignity of the embryo and the basic rights that originate in its inherent dignity. The other two principles come from a particular understanding of procreation as the proper fruit of marriage between husband and wife, and of the fact that the marital sexual act and the procreation that may ensue cannot be separated. *Dignitas Personae* explains that

medical techniques to treat infertility must respect the so-called two fundamental goods of marriage: “ a the unity of marriage, which means reciprocal respect for the right within marriage to become a father or mother only together with the other spouse; and b) the specifically human values of sexuality which require ‘that the procreation of a human person be brought about as the fruit of the conjugal act specific to the love between spouses’.”<sup>10</sup> It is from this specific understanding of marriage that many ethicists argue that embryo adoption is morally illicit.

Rev. Tadeusz Pacholczyk of the National Catholic Bioethics Center, for example, employs the understanding of marriage as described in *Dignitas Personae* to argue that embryo adoption violates the procreative act. He suggests that the procreative act consists not only of the conjugal act, but also of fertilization, implantation, pregnancy, and birth.<sup>11</sup> It is from this view of procreation that Pacholczyk argues, “Any attempt to become a parent by invoking the procreative powers of their bodies outside the specific setting of committed marital intimacy represents a violation of the gift of their mutually committed sexuality and a violation of its intrinsic meaning...”<sup>12</sup> In other words,

Pacholczyk argues that, by adopting an embryo, the couple would be circumventing the procreative act, which is necessary for morally licit procreation.

Australian bioethicist Nicholas Tonti-Filippini contended that the end of HET, i.e., the rescue of an embryo, is good but the means of impregnating the woman outside of her marriage are not.<sup>13</sup> In marriage there should be the total and free gift of self to the other and the fruit of this spousal gift is the conceiving of a child. Tonti-Filippini claimed that the embryo-transfer procedure is an act of infidelity to marriage because the transfer introduces a new entity from outside the marital union.<sup>14</sup> Hence, the child would not be a sign of the marital love and self-gift to each other. Further, the father has not contributed to the conception of the child, which means the child relates to the woman exclusively.<sup>15</sup> In summary, Tonti-Filippini, Pacholczyk, and others argue against any embryo adoption because it goes against procreation occurring only through the marital act. Since HET leaves out this act, they argue that, in every circumstance, embryo adoption is morally illicit.

The church’s teaching on the fundamental inviolable goods of marriage is clear. With

regards to embryo adoption, however, we must ask whether there are any circumstances in which it is possible to save the life of the human embryo and still preserve the fundamental goods of marriage. It is important to remember that we are not creating embryos in order to implant them - as in IVF - but are rather dealing with already created human life, suspended in the cryopreserved state. It is possible to agree with both Tonti-Filippini's and Pacholczyk's assertion that, *ideally*, life should be brought forth through the marital gift of the spouses in the procreative act. But in the case of embryonic adoption, life already exists and the embryo will most surely die if not adopted.

My view is that the adoption of an embryo by a married couple would not necessarily contradict the marital act or the two goods of marriage listed in *Dignitas Personae*.

Unlike IVF, the adoption is not a means of circumventing the procreative act because the human life already exists; therefore it cannot be classified as marital infidelity or a wrong against the procreative act.

Theologian William May pointed out, "The woman is *not* choosing to give herself in an act of genital union to someone other than her spouse, nor is she choosing to engage in

the conjugal act or in *any* sexual act. Thus, her choice does not violate any relevant human good but rather serves to protect and nurture the good of human life."<sup>16</sup> If a married couple is not restricting the possibility of procreation in the marital act and is not engaged in morally illicit reproductive procedures - such as IVF- then it appears that adopting an already existing embryo does not violate the marital act.

In Tonti-Filippini's and Pacholczyk's arguments there appear to be a tendency to reduce and restrict the fundamental goods of marriage to a purely biological process. We know that the fundamental goods of marriage also include spiritual, emotional, and nurturing aspects. It is for these reasons that infertile couples can have a fruitful marriage, evidenced in various ways such as the adoption of children and/or their special care for others in their community or extended family. A married couple's decision to adopt an embryo is an intentional 'yes' to the preservation of the life of the embryo and a commitment to nurturing and raising a human being. It seems possible to argue that, under the right circumstances, a couple's beautiful 'yes' to life, i.e., to adopt a cryopreserved embryo, fully fits the fundamental goods of marriage. Lastly, it

would be hard to agree with the argument of Tonti-Filippini that, due to the father's exclusion from the process, the child will relate only to the woman. This may be the case biologically, but certainly not relationally. Tonti-Filippini failed to account for the importance of the mutual 'yes' pronounced by *both* spouses to adopt this embryo. Because of all the aforementioned reasons, it appears that, at least in principle, the adoption of an embryo - when done under the correct conditions - does not violate the fundamental goods of marriage and the marital act.

Charles Robertson from the Center for Thomistic Studies at the University of St. Thomas in Houston claims that the object of embryo transfer is contrary to the order of reason, therefore making embryo adoption illicit.<sup>17</sup> The sum of his argument is that the object of embryo transfer is illicit because it violates justice by going against "a common good, namely, the good of the species" and it is contrary to the natural order designed by God and, therefore, a refusal to "render to God his due."<sup>18</sup> Robertson's conclusion is agreeable within the context of IVF because the object of IVF is indeed morally impermissible, as he aptly shows; but, with regards to his analysis of embryo adoption, it

seems that he mistakenly believes the object to be the same. The object in embryo adoption *is not* embryo transfer as a procreative act (intricately connected to IVF); rather, the object on embryo adoption is to *save a human life* through the performance of a medical act (embryo transfer).

Elizabeth B. Rex, adjunct professor of bioethics at Holy Apostles College and Seminary, offers further clarification when she makes the distinction between the IVF procedure and the technology used to rescue an embryo. She argues, "[Church] documents explicitly declare that all therapies on the embryo that aid in its healing and survival must be considered licit. The procedure known as embryo transfer unquestionably meets all of these criteria."<sup>19</sup> In short, the technology used to transfer the embryo into the womb is being used to save the embryo's life. It therefore seems possible to affirm that the object of embryo transfer for embryo adoption is not intrinsically immoral.

Moreover, when the life of the embryo that would be saved is taken into account, it is possible to see that, in fact - and contrary to Robertson's claim - embryo adoption is a demand of justice, that is, it furthers the

preservation of the species through the saving of the embryo's life. Furthermore, we must ask whether embryo adoption goes against the natural order designed by God. Given the unique dilemma that cryopreserved embryos present for our moral analysis, we might be forced to make "unorthodox" moral decisions. In other words, given the unique circumstances in which cryopreserved embryos are found, would giving them a chance to live be aligned with God's plan for the natural order? The exploration of the previous arguments seems to point towards the affirmative.

It appears that the "simplest case" from a moral perspective would consist of a married couple that has the sole intention of giving the embryo a chance to live and to grow within their family. This married couple would have to be fully open to life through the natural procreative process. In other words, it would appear immoral if they were using embryo adoption to replace the natural procreative act to which all married couples are called. Additionally, if said married couple were infertile, their intention would have to exclusively be the adoption of the embryo and not just to have recourse to another type of treatment for infertility. It

would also need to be ensured that the embryo adoption was not promoting IVF procedures. A solution to this might be the formation of a mediating organization - such as a Christian adoption agency - that could facilitate embryo adoption while ensuring that there were no compromises with the IVF industry.<sup>20</sup> In addition, as *Dignitas Personae* points out, medical, psychological, and legal issues will need to be addressed before embryo adoption can be deemed permissible from a moral point of view.

In summary, it appears that, at least under the right conditions, embryo adoption can be morally licit. Discussion needs to continue and further work needs to be done in order to stipulate the right circumstances in which cryopreserved embryos can be given the chance to live and grow in a loving family. But even if embryo adoption may be permissible in some cases, it would never solve the issue of what to do with the hundreds of thousands of cryopreserved embryos. What therefore do we do with "excess" embryos already in existence?

## Additional Options for Cryopreserved Embryos

*Dignitas Personae* best summarizes the current situation when it states, “All things considered, it needs to be recognized that the thousands of abandoned embryos represent a situation of injustice which in fact cannot be resolved.”<sup>21</sup> At present, two options remain: 1) existing embryos will be kept indefinitely in their cryopreserved state or until they are no longer viable, at which point they will be discarded; or 2) cryopreserved embryos will be unfrozen and brought back to a viable living state, subsequently allowing them to die of a natural death.<sup>22</sup>

Cryopreservation presents unique challenges. The process of cryopreservation involves placing embryos in a frozen anhydrous state, which separates the parts of the embryo through a chemical solution.<sup>23</sup> The cryopreserved embryo is not dead because it can undergo a thawing procedure that allows the life process of the embryo to resume. Instead, it is in a state of arrested development because, due to the chemical solution, there is no integrated or dynamic interaction of the parts of the embryo and thus, all activity has ceased.<sup>24</sup>

After establishing the facts, the following questions must be asked: is it in the best interest of the human embryo to stay in this frozen anhydrous state? Does being frozen afford the embryo the greatest human dignity? Cryopreservation leaves the embryo in an indefinite state between life and death, *Donum Vitae* notes,

“The freezing of embryos, even when carried out in order to preserve the life of an embryo - cryopreservation - constitutes an offence against the respect due to human beings by exposing them to grave risks of death or harm to their physical integrity and depriving them, at least temporarily, of maternal shelter and gestation, thus placing them in a situation in which further offences and manipulation are possible.”<sup>25</sup>

There is also the question of intention and circumstances behind the act of cryopreservation. The most common intention for cryogenic storage is to preserve the embryos for future use (pregnancy or research).<sup>26</sup> Even if the intention of this storage is to preserve the embryos until an opportunity arises for them to be brought out of their anhydrous state and placed in an

environment that may be conducive to the embryo's development, the circumstances bring forth particular problems.<sup>27</sup> In most cases, the circumstances yield a situation in which there is little to no hope for these embryos to have an opportunity for growth through morally permissible means. It thus follows that maintaining cryopreserved embryos for an indefinite period of time, with no possibility of ever being able to continue maturation, is not the solution that will afford the embryo the greatest possible dignity.

Some scholars, such as William Saunders and Jason Eberl, have interpreted *Donum Vitae* as rejecting the thawing of cryopreserved embryos in order to allow for natural death.<sup>28</sup> The *Donum Vitae* passage cited by these authors states, "It is therefore not in conformity with the moral law deliberately to expose to death human embryos obtained 'in vitro'."<sup>29</sup> Patrick Tully, assistant professor of philosophy at the University of Scranton, points out that Saunders and Eberl have taken this *Donum Vitae* passage out of context. Tully rightly notes that the focus of this section is on embryo destructive research, not on the moral dilemma of what to do with already frozen embryos.<sup>30</sup> Both *Donum Vitae* and

*Dignitas Personae* acknowledge the problematic issues of cryopreservation and the lack of clear moral options but neither document offers a solution to the dilemma presented by cryopreserved embryos. Therefore, it can be concluded that the Congregation for the Doctrine of the Faith leaves the option of the permissibility of natural death open for further investigation.

How do we ethically assess the process of thawing embryos and allowing them to die? It is important that this thawing process be done properly, i.e., in a manner that respects the cryopreserved embryos' dignity and rights. This means, for example, that scientists need to be conscious that if an embryo is set out to thaw from its anhydrous state without appropriate care, it will actually "explode" during the thawing process.<sup>31</sup> This action does not respect the inherent dignity of the embryo. Further, it is important to remember that thawing must never involve any intention to directly kill the embryo.<sup>32</sup> Therefore, Tonti-Filippini's suggestion that, through the proper procedures, the embryos be removed from their anhydrous state and restored to their natural living state seems agreeable.<sup>33</sup>



After being brought back to viability, the embryo would be allowed to live for a brief period before dying naturally as there would be no further morally permissible actions that would give it a sustained life. Here it seems that the distinction used for end-of-life decisions between intending the death of the patient and allowing a person to die with dignity is applicable here. With no viable options to continue the embryo's life, all treatment to keep the embryo alive is thus suspended and the embryo goes through a natural dying process.

It would appear that both of these objects, the embryo being brought back to viability and the subsequent letting the embryo naturally die, are morally permissible. Further, the intention behind this action, as Tully notes, is "to relieve them [cryopreserved embryos] of disproportionate burdens and risks; the choice is one that seeks to serve their good as best one can given the circumstances."<sup>34</sup> From this brief analysis I conclude that if the right process is followed for embryo thawing and there is the correct intention and the right circumstances, it would be permissible to allow for the natural death of cryopreserved embryos.

## Safeguarding the Dignity of the Cryopreserved Embryo

If we claim human dignity for embryos from the moment of conception we must carefully examine the course of action that affords cryopreserved embryos this dignity. I have argued that under the right circumstances embryo adoption could be a morally licit option, but there are a limited number of potential adopting parents. It therefore appears that the best practical and morally permissible course of action currently available is to allow cryopreserved embryos to die naturally, with respect for their dignity and their rights, which all members of the human species should enjoy.<sup>35</sup>

There are still some unanswered questions. For instance, at what point should these cryopreserved embryos be brought back to their natural living state and allowed a natural death? Should the criteria for bringing an embryo back to viability be when there is seemingly no possibility for the embryo to have an opportunity at life? For example, for those "leftover" embryos that are no longer desired by their parents and for which it appears the only other permissible option is indefinite cryopreservation, the least harmful choice

would most likely be natural death. Some further questions would be, who has the legal right to make a decision for the embryo? How involved should Catholic/Christian groups be in dealing with the fate of cryopreserved embryos?

These and many other questions remain for future discussion. However, it is reasonable to conclude that currently it is far better for cryopreserved embryos to die with dignity than to be frozen indefinitely, or worse, be manipulated and used for experimentation.

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<sup>2</sup> Congregation for the Doctrine of the Faith, *Dignitas Personae* [Instruction on Certain Bioethical Questions], Vatican Website, September 8, 2008, sec. 5, 19, accessed October 30, 2015.

[http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_20081208\\_dignitas-personae\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20081208_dignitas-personae_en.html)

<sup>3</sup> Congregation for the Doctrine of the Faith, *Dignitas Personae*, sec. 19.

<sup>4</sup> Patrick A. Tully, “Cryopreserved Embryos and *Dignitas Personae*: Another Option?,” *Kennedy Institute of Ethics Journal* 22, no. 4 (December 2012): 367. Tully notes that in 2003 there existed approximately 400,000 cryopreserved embryos.

<sup>5</sup> Tully, “Cryopreserved Embryos and *Dignitas Personae*,” 368.

<sup>6</sup> Ibid.

<sup>7</sup> Tully, “Cryopreserved Embryos and *Dignitas Personae*,” 368.

<sup>8</sup> Ryan C. Mayer, “Is Embryo Adoption a Form of Surrogacy?,” *National Catholic Bioethics Quarterly* 11, no. 2 (Summer 2011): 250.

<sup>9</sup> Due to additional moral issues regarding embryonic rescue and the narrow circumstances granted here to embryo adoption, the argument of embryonic rescue will remain unaddressed and will constitute material for further research.

<sup>10</sup> Congregation for the Doctrine of the Faith, *Dignitas Personae*, sec.12.

<sup>11</sup> Tadeusz Pacholczyk, “Some Moral Contradictions to Embryo Adoption,” in *Human Embryo Adoption: Biotechnology, Marriage and the Right to Life*, ed. Rev. Thomas V. Berg and Edward J. Furton (Philadelphia: The National Catholic Bioethics Center, 2006), 43.

<sup>12</sup> Pacholczyk, “Some Moral Contradictions to Embryo Adoption,” 52.

<sup>13</sup> 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. Rev. Thomas V. Berg and Edward J. Furton (Philadelphia: The National Catholic Bioethics Center, 2006), 99.

<sup>14</sup> Tonti-Filippini, “The Embryo Rescue Debate,” 101.

<sup>15</sup> Ibid.

<sup>16</sup> William E. May, “The Object of the Acting Woman in Embryo Rescue,” in *Human Embryo Adoption: Biotechnology, Marriage and the Right to Life*, ed. Rev. Thomas V. Berg and Edward J. Furton (Philadelphia: The National Catholic Bioethics Center, 2006), 145.

<sup>17</sup> Charles Robertson, “A Thomistic Analysis of Embryo Adoption,” *National Catholic Bioethics Quarterly* 14, no. 4 (Winter 2014): 676.

<sup>18</sup> Robertson, “A Thomistic Analysis of Embryo Adoption,” 685.

<sup>19</sup> Elizabeth B. Rex, “IVF, Embryo Transfer, and Embryo Adoption,” *National Catholic Bioethics Quarterly* 14, No. 2 (Summer 2014): 233.

<sup>20</sup> Edward J. Furton, “Embryo Adoption Reconsidered,” *National Catholic Bioethics Quarterly* 10, no. 2 (Jun 2010): 347.

<sup>21</sup> Congregation for the Doctrine of the Faith, *Dignitas Personae*, sec. 19.

<sup>22</sup> Patrick A. Tully, “Cryopreserved Embryos and *Dignitas Personae*,” 368.

<sup>23</sup> Tonti-Filippini, “The Embryo Rescue Debate,” 109.

<sup>24</sup> Ibid., 108-109.

<sup>25</sup> Congregation for the Doctrine of the Faith, *Donum Vitae [Instruction on Respect for Human*

*Life in its Origin and on the Dignity of Procreation: Replies to Certain Questions of the Day]* Vatican Website, February 22, 1987, sec. I q. 6, accessed April 16, 2016.

<sup>26</sup> Tully, “Cryopreserved Embryos and *Dignitas Personae*,” 376.

<sup>27</sup> Even in the hypothetical situation that these embryos could all be given an opportunity for development, the permissibility of the action would still need to be considered. In fact, as was noted in the analysis of embryonic adoption, it seems that the morally permissible options are extremely limited.

<sup>28</sup> Tully, “Cryopreserved Embryos and *Dignitas Personae*,” 373-74.

<sup>29</sup> Congregation for the Doctrine of the Faith, *Donum Vitae*, sec. I, q. 5.

<sup>30</sup> Tully, “Cryopreserved Embryos and *Dignitas Personae*,” 374.

<sup>31</sup> Tonti-Filippini, “The Embryo Rescue Debate,” 106.

<sup>32</sup> Br. Glenn Breed, “The Only Moral Option Is Embryo Adoption,” *The National Catholic Bioethics Quarterly* 14, no. 3 (Fall 2014): 443.

<sup>33</sup> Tonti-Filippini, “The Embryo Rescue Debate,” 112.

<sup>34</sup> Tully, “Cryopreserved Embryos and *Dignitas Personae*,” 378.

<sup>35</sup> Anthony Fisher, *Catholic Bioethics for a New Millennium* (New York: Cambridge University Press, 2012), 144.

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