



Charitable Surrogacy and Embryo Adoption

by Father Chad Ripperger, F.S.S.P.

A few years ago in Great Britain, a series of events led to the death of a mother who had provided eggs for the production of embryos for the sake of later implantation. The mother's death left the moral community in a quandary and it has also left the political community in the same quandary – as is evidenced by President George Bush, who has begun to encourage embryo adoption. I wish to discuss the question: is it morally permissible for another woman to carry the embryos to term? There was a great deal of discussion at the time and the courts in England eventually ordered the embryos destroyed.

This article will not discuss the morality of the decision of the British court. Rather, it will address the other question – namely, is it morally permissible for a woman to carry the embryos of another woman to term? Secondly, is it morally permissible to do this out of motivations of charity, i.e., as an act of charity toward the embryos? In order to answer these questions, we must first discuss whether surrogacy in general is

permitted by the natural law. Then I shall consider whether charity makes the act of surrogacy morally permissible; and I shall conclude with some pastoral considerations regarding frozen embryos whose birth mother is incapable of carrying them to term.

Surrogacy in General

In *Humanae Vitae*, Pope Paul VI described two important aspects regarding conjugal acts. The first is the two ends, or meanings, as he calls them, to the conjugal act: "That teaching, often set forth by the Magisterium, is founded upon the inseparable connection, willed by God and unable to be broken by man on his own initiative, between the two meanings of the conjugal act: the unitive meaning and the procreative meaning."¹ The inseparability of the union of the conjugal act from its procreative dimension has

become the cornerstone of Paul VI's teaching against contraception. The Pope then does one other thing which is quite important – he roots this inseparability in the natural law:

God has wisely disposed natural laws and rhythms of fecundity which, of themselves, cause a separation in the succession of births. Nonetheless the Church, calling men back to the observance of the norms of the natural law, as interpreted by their constant doctrine, teaches that each

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and every marriage act [*quilibet matrimonii usus*] must remain open to the transmission of life.... *Indeed, by its intimate structure, the conjugal act, while most closely uniting husband and wife, capacitates them for the generation of new lives, according to laws inscribed in the very being of man and of woman.*²

The inseparability of the unitive and procreative finalities of the conjugal act indicates that the conjugal act and the generative faculty have inherent moral finalities, since children require responsible care.

Yet the Church, which is the authentic interpreter of the natural law,³ has more to say about the generative faculty. As Pope John Paul II observes in *Evangelium Vitae*, “procured abortion is *the deliberate and direct killing, by whatever means it is carried out, of a human being in the initial phase of his or her existence, extending from conception to birth....*”⁴ *I confirm that the direct and voluntary killing of an innocent human being is always gravely immoral.*⁵ Since the unborn child constitutes innocent life, it is not permitted to kill the child directly⁶ from the time of conception until birth.”

Taking into consideration the two teachings of the Church regarding the conjugal act and abortion, one realizes that from the time of natural union of the spouses until the time of birth in accord with nature, there are to be no interruptions in the process. The nature of the generative faculty of the woman is such that it is designed to be receptive to the male seed. This faculty is designed for that function, and so the generative faculty of the woman is not designed to take into itself the child of another woman but only the seed of a lawful spouse.⁷ In effect, part of the natural law, i.e., the structure and design of the generative faculties of men and women themselves, is such that there be one continuous process from natural union to birth in accord with nature. Here the term “birth in accord with nature” is distinguished from “natural birth,” insofar as “natural birth” sometimes refers to the passage of the child through the birth canal. However, cesarean sections would be permitted since the natural law seems to indicate that the

pregnancy is to end at a given time, and if there is some complication in the birth process, the child may be taken by surgical means in order to accomplish the end of this inclination of the natural law: the giving of life to the child. Hence, “natural birth” is not always required by the natural law but a birth in accord with natural law inclinations would be required to make it licit.

The natural law would then be seen to prohibit surrogacy in general since surrogacy is a process in which an embryo is placed inside the womb of a woman other than the biological mother. Since the generative faculty of the woman is designed to receive the male seed and not the child of another woman, then the natural law would seem to prohibit surrogacy. There does not exist in the generative faculty of a woman a natural mechanism by which she is able to carry the child of another woman. It can only be accomplished artificially, through technology. The placing of embryos in the womb of a woman who is not the biological mother disrupts the procreative element from the unitive element, since she would be “with child” without the union of the conjugal act. Hence, introducing an embryo into the uterus of a woman who is not the biological mother is contrary to the generative faculty and is therefore contrary to the natural law. Now since any act which is a direct violation of the natural law is *malum in se*, then any species of surrogacy would be prohibited, and this would also include embryo adoption.⁸

When a man and a woman have

gone through the immoral process of *in vitro* fertilization, there remains with the woman who donates the eggs a grave obligation to attempt to carry each of those embryos to term. This would not be contrary to the above moral analysis of surrogacy since the definition of surrogacy is the carrying of a child that is not biologically her own. This moral requirement by the biological mother is, in fact, not a case of surrogacy at all. Some might argue that since the womb of the woman is designed to receive the seed of her husband, that to introduce the embryos might be against the natural law. But such an analysis appears flawed. The placing

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of her embryos is, in fact, in accord with nature since that is where they should be in the first place. By placing the embryos in the womb, the order of nature is restored. Since the unitive dimension has been separated by the *in vitro* procedure, the placing of the embryos in the womb of the

biological mother restores nature, somewhat, by placing the embryos in the location intended by nature. For a woman to carry her own embryos, even if they are conceived *in vitro*, is not surrogacy.

Charitable Surrogacy or Embryo Adoption in Particular

Many Catholics who are dedicated to the pro-life movement often propose allowing women, who are not the biological mothers of the embryos, to adopt embryos and allow them to be implanted in their wombs as an act of sacrifice and charity for the sake of the child. The argument is normally founded on charity as well as on a

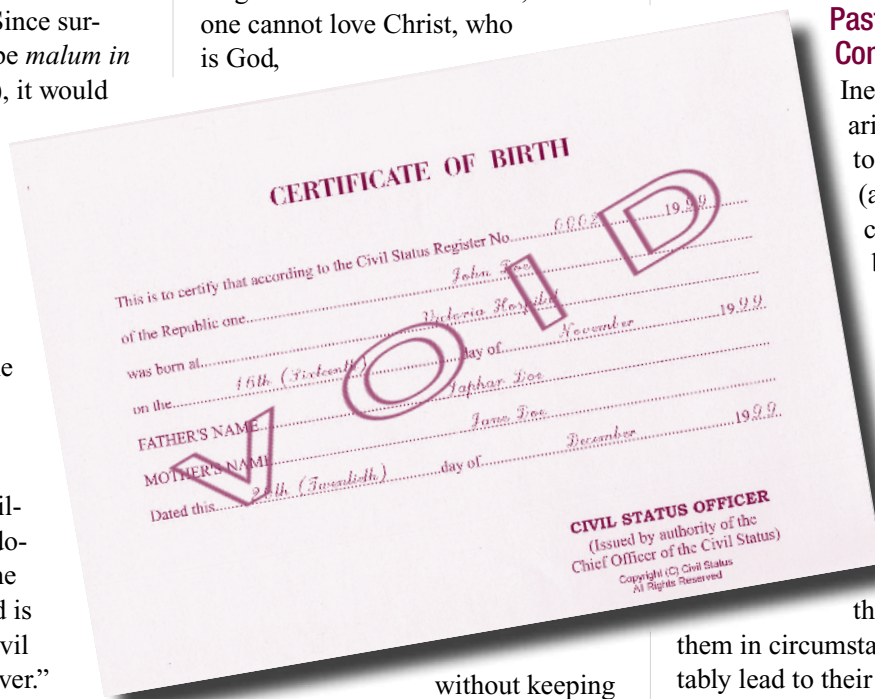
desire not to allow the child (embryo) to lose his life. Such sentiments are noble insofar as they desire the life of the child. However, at root is a foundational question. Since surrogacy would appear to be *malum in se* (i.e., intrinsically evil), it would prohibit any species of surrogacy, whether it is founded in charity or not. The real question, therefore, that seems to be at the heart of the discussion is: can one ever justifiably violate the natural law based upon charitable intentions?

Two moral principles seem to deny this possibility. The first is the pseudo-Dionysian principle of the integral good: "The good is from an integral cause, evil from any defect whatsoever." The fonts of the moral act, i.e., the object (what one is doing or the very action one is performing), the end and the circumstances, must all be good in order for the action to be morally good. If any one of the fonts is bad, the whole of the action becomes bad in the process. It is upon this principle that another principle is founded – the principle that "ends do not justify the means." If surrogacy is *malum in se*, then a charitable intention does not suffice to justify it.

The second principle, which charitable surrogacy violates, concerns the fact that charity cannot be separated from the natural law. We see this clearly when Christ said, "If you love me, keep my commandments" (Jn. 14:15), and, "But if thou wilt enter into life, keep the commandments. He said to him: Which? And Jesus said: Thou shalt do no murder, Thou shalt not commit adultery, Thou shalt not steal, Thou shalt not bear false witness. Honor thy father and thy mother: and, Thou shalt love thy

neighbor as thyself."⁹ Since charity is the supernatural virtue in the will by which one loves God and one's neighbor for the sake of God,¹⁰ then one cannot love Christ, who is God,

so one cannot violate the natural law through surrogacy for the sake of charitable intentions.



without keeping His commandments. The commandments, to which Christ told us we must adhere, are the Ten Commandments.

St. Thomas shows in the *Summa Contra Gentiles*¹¹ that man was given a law from God through his natural inclinations and that the laws of God are ordered toward the love of God.¹² In the remaining part of book three of the *Summa Contra Gentiles*, St. Thomas then establishes by the natural light of reason much of the content of the Ten Commandments without an appeal to revelation.¹³ All of this leads us to recognize that it is not possible to love God, i.e., it is not possible to fulfill the precepts of charity,¹⁴ without following the natural law. Therefore, it is not morally permissible to separate the natural law from the precepts of charity, and

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them in circumstances that will inevitably lead to their deaths, and unless cryogenics are used, the embryos will die in a short amount of time. Here we are prescinding from the consideration of the process of ectogenesis, in which the embryos could be gestated extra uterine. Since that issue opens up a whole new area

of discussion and since it is not now possible (although it may be in the future with technological advances progressing at the rate that they are), it will not be addressed here. Second, the Congregation for the Doctrine of the Faith in *Donum Vitae* (I, 1) has stated that the embryos must be treated with the same dignity as any other human being. Third, the actual ontological status of the embryos has not been fully declared by the Church. While the Congregation for the Doctrine of the Faith has stated that they must be treated as persons,

Pastoral Considerations

Inevitably, the question arises: what is one to do with embryos (a) that the mother cannot physically bring to term or (b) in cases in which the mother has died? First, in the producing of the embryos *in vitro* the parents have, in effect, placed the embryos *in extremis* – i.e., they have placed

it has not said that they *are* persons. On the other hand, the Church has not said that they are not persons, and since the practice of the Church is to treat them as such, then the benefit of the doubt must be given in favor of their having the ontological status as persons.

Pastorally, therefore, it would appear that the most prudential way to handle the

embryos is to baptize them conditionally,¹⁵ if possible, and then allow the natural process of death to occur. This appears to be the only pastoral approach that observes all of the moral principles involved. Since they are, in effect, *in extremis*, the prolongation of their life by cryogenic means would appear to constitute extraordinary means. It would appear on this principle that it would be morally permissible to thaw the embryos and conditionally baptize them, if possible. If they are persons, then they shall enjoy eternal life by virtue of their baptism. This appears to be all that we can do for them at

the current moment. If, in the future, ectogenesis does become possible, the Church will have to make some form of pronouncement about using that as a means to keep the embryos alive or even to gestate them, since it may be argued that ectogenesis could constitute ordinary means. While it

is lamentable that there is such a large number of embryos that have been produced

by technological means, women who are not the biological mothers of the embryos are not permitted to adopt the embryos to save their lives.

Many of the conclusions of this article are placed in the subjunctive in order to indicate that ultimately we must await the judgment of the Church. For this reason, all of the conclusions of this article must be viewed as pending the judgment of the Church, and should she declare to the contrary, the conclusions of this article must be changed. For this reason, the author submits these conclusions, while humbly awaiting the judgment of the Church. ✠

If surrogacy is malum in se, then a charitable intention does not suffice to justify it.

Notes

- 1 Paul VI, *Humanae Vitae*, para. 12.
- 2 Ibid., paras. 11 and 12.
- 3 Ibid., para. 4.
- 4 John Paul II, *Evangelium Vitae*, para. 58.
- 5 Ibid., para. 57 (emphasis his). This last reference is of interest: it appears as if the Holy Father is stating that the prohibition of the direct taking of innocent life is infallible by ordinary Magisterial teaching.
- 6 Here it is clear that the Holy Father is leaving open the possibility of indirectly taking the child's life as founded upon the principle of double effect in ectopic pregnancies. There are a number of other documents which refer to the natural law as regulating both the conjugal act and abortion.
- 7 This is founded on the Church's condemnation of heterologous artificial insemination; see Congregation for the Doctrine of the Faith, *Donum Vitae*, 1987.
- 8 All forms of surrogacy appear to be against the second category of natural inclination; see ST I-II, q. 94, a. 2.
- 9 Matthew 19: 17-19. See also Matthew 5: 17-19; Matthew 15: 1-7 and Luke 18: 18-20.
- 10 See ST II-II, qq. 23-46.
- 11 Book III, c. 114.
- 12 Ibid., cc. 115f.
- 13 Ibid., cc. 120-130.
- 14 Matthew 22: 37ff.
- 15 The Baptism must be done conditionally since the Church has not given a final declaration on their ontological status. Even though many solid arguments from philosophy are given, nevertheless, in pastoral action, when doubt of fact (in this case, ontological status) is present, then the sacraments are administered conditionally.



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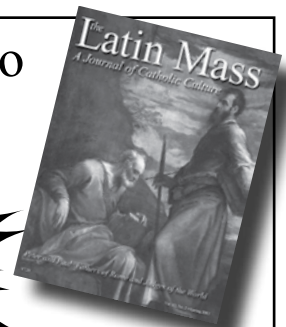
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