

The Absurd Fate of Frozen Embryos

Interview With Law Professor Brian Scarnecchia

By Andrea Kirk Assaf

ROME, Feb. 25, 2010 ([Zenit.org](http://www.zenit.org)).- John Paul II pleaded with fertility technicians to stop creating them. "Donum Vitae," issued in 1997 by the Congregation for the Doctrine of the Faith, spoke of the "absurd fate" they were condemned to. The Snowflake Baby Program, launched in 1997, facilitated their adoption or "rescue."

Over 400,000 tiny human embryos created through in vitro fertilization exist today, their lives suspended in containers of liquid nitrogen, dubbed "concentration cans" by the late president of the Pontifical Academy for Life, Dr. Jerome Lejeune.

Because the Catholic Church's plea to not create this bioethical dilemma went unheeded by many biopharmaceutical companies, the Vatican is now forced to make a moral judgment on the fate of hundreds of thousands of frozen lives.

Brian Scarnecchia, president of the International Solidarity and Human Rights Institute and professor of law at Ave Maria Law School, recently delivered a lecture on this developing issue at the Pontifical Council for Justice and Peace.

In this interview with ZENIT, the professor articulated the complex moral questions involved in the debate concerning the fate of frozen embryos.

ZENIT: How did you come to be invited to speak on frozen embryos at the Vatican?

Scarnecchia: I was here for the Rome Forum, an event for Catholic nongovernmental organizations sponsored by the Vatican Secretariat of State and a number of dicasteries. They had a core curriculum planned that included lectures on economics, development, human rights, and bioethics. I was to present two lectures for the Rome Forum on fundamental human rights.

The secretary for the Rome Forum, Dr. Fermina Alvarez, asked me to present a lecture at the Pontifical Council of Justice and Peace located in the Palazzo San Calisto, and she also invited various persons working with Vatican congregations and councils assembled in that palazzo to attend. So when I realized I'd be speaking principally to people already working with the Holy See, I wanted to vet and get input on a topic where there is a development of doctrine issue still under consideration.

ZENIT: Is everything still up for debate, since the matter has not yet been closed by the Congregation for the Doctrine of the Faith?

Scarnecchia: No, certainly not -- even back when "Donum Vitae" was issued in 1987, the freezing of human embryos was condemned, in vitro fertilization was condemned, and surrogate motherhood was declared illicit and condemned. You would think that that would solve the problem, but, of course, not all the issues were addressed.

For instance, "Donum Vitae" principally addressed the coming to be of a human being through a conception that was not the fruit of a conjugal act of love between a husband and a wife, but occurred in vitro, that is, in a glass petri dish. This procedure was clearly condemned as was the freezing of "extra" or "spare" embryos.

Nonetheless, thousands of frozen embryos have been created and the question was asked by many well intentioned persons -- can a woman, other than the mother, have a frozen embryo transplanted into her womb without becoming a surrogate mother?

Some bioethicists faithful to the magisterium, not dissenting theologians by any means, who were concerned about the fate of these frozen embryos, argued that rescuing or adopting a frozen embryo would not make the woman a surrogate. A surrogate, they argued, would be one who, for love or for money, took an embryo into her womb with the intention of giving it to another -- "I'm doing it for my sister, I'm doing it for my daughter, I'm doing it for \$20,000." A woman would not become a surrogate mother, they argued, if she did not intend to give the child away after birth but intended to adopt him or her. Anecdotally, I've spoken to a nun who said that if heterologous embryo transfer were approved, she would be tempted to found a new order of nuns dedicated to rescuing these frozen embryos.

This approach was criticized for collapsing the motive into the moral deed. Bioethicists critical of embryo adoption objected and said [that what's more important than one's motive] is the moral deed, the "what", which they understood to be the act of becoming pregnant with someone else's child.

These bioethicists argued that if the transfer of a frozen embryo into a woman's womb was surrogacy per se, it would be intrinsically evil and it couldn't be done for any good motive, not even to save the life of the frozen embryo.

ZENIT: Has there been any resolution of that debate in the Church?

Scarnecchia: Well, that debate went on for 20 years, from 1987-2008. Then the Congregation for the Doctrine of the Faith issued "Dignitas Personae." [Paragraph 19](#) offered some resolution to this debate. My talk picked up where "Dignitas Personae" left off and what it did not yet address.

[Paragraph 19](#) said that those who are genetic strangers to the embryo, who through heterologous embryo transfer, become pregnant with a child genetically not their own, have engaged in acts similar to heterologous in vitro fertilization and/or surrogacy, and it was not a licit act. So it is not licit to adopt an embryo to fill out your family size.

In the United States, there is the Snowflake Baby Program, promoted by National Right to Life as an alternative to embryo destructive research on these embryos. Certainly, this was a well-intentioned movement. At the time, between "Donum Vitae" and "Dignitas Personae," Catholics could in good conscience, after weighing both sides of the debate, adopt a frozen embryo. Following the publication of Dignitas Personae this would no longer seem to be an option a Catholic can in good faith pursue.

Some bioethicists who argued against heterologous embryo transfer said that it was tantamount to a technological adultery; that for a woman to become pregnant with another couple's child violates the unitive good of marriage

ZENIT: What issue is left uncovered by these two documents?

Scarnecchia: Certain cases of altruistic frozen embryo "rescue".

Paragraph 19 states that, despite the noble intention of saving their lives, rescuing frozen embryos would not be much different than heterologous in vitro fertilization (combining the gametes of non-spouses) and surrogacy.

My talk was about [the situation] of a mother who repents of the sin of in vitro fertilization and wants to take back or rescue her own frozen embryos. When I was asked to advise on this issue for a legal case, Evans v. UK, pending before the European Court of Human Rights back in 2006, my response was that the genetic mother could rescue her own frozen embryos, and not become a surrogate and, so, Catholic members of the European Parliament could advocate for this outcome in good faith. Let's not forget, that back in the early 90s, Dr. Jerome Lejeune testified in court that the genetic mother had a duty to take reasonable steps to save her "tiny children" frozen in a "concentration can."

I believe the principle that underlies "Donum Vitae's" objection to in vitro fertilization is the relational nature of the human person, and in particular the gift of self that spouses promise to each other and have a duty to fulfill.

This parental self-giving has three phases. First, parental self-giving is vouchsafed and guaranteed in the genetic phase when the spouses joyfully and freely give themselves to each other in an act of conjugal intimacy, which is continued through to natural conception: Every child has the right to be conceived beneath his or her mother's heart flowing from an act of parental conjugal self-giving. The second phase of parental self-giving occurs between conception and birth. It may be referred to as the gestational phase: Every child has a right to be nurtured in his or her mother's womb. And the final phase is formative: Every child after birth has the right to be raised by his or her parents until maturity.

In my soon to be published book, "Bioethics, Law and Catholic Social Thought" (Scarecrow Press, 2010), I argue that when the genetic mother takes her frozen embryo back into her womb, through homologous embryo transfer, that act affirms the child's right to gestational parenthood beneath his or her mother's heart. On the other hand, should a genetic stranger do so, the child suffers a second violation of its rights through heterologous embryo transfer, which "Dignitas Personae" makes clear is analogous to heterologous in vitro fertilization and surrogacy.

Other bioethicists argue to the contrary that if every conception must be a result of a conjugal act of husband and wife, as "Donum Vitae" states, then every pregnancy must also flow from an act of conjugal union between spouses. Therefore, if the genetic mother would become pregnant through acts of technicians, they argue that this homologous embryo transfer would be a second violation of the rights of the embryo and the mother would, ironically, become a surrogate to her own child. It seems to me that if, by way of analogy, an ectopic tubal pregnancy could be resolved by successfully transferring the embryonic child from its site of implantation in its mother's fallopian tube to its mother's uterus, few would object that the child suffered violation because its life was saved through a uterine pregnancy begun by third parties through an act of homologous embryo transfer.

This, the licitness of homologous embryo transfer, is still an open and important lacuna that the Congregation for the Doctrine of the Faith needs to address and resolve one way or another.