**Embryo Adoption or Donation?**

**The Distinction and Its Implications**

Paige Comstock Cunningham, J.D.

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**What's in a name? Wouldn't a rose by any other name smell just as sweet to a depressive?**

Labels can have significant weight in debates of great political importance—such as the determination of the legal status of the human embryo. Labels also may reveal a great deal about motivations and can be used in an attempt to increase or decrease the value of someone or something. When a human embryo is safely implanted in a woman, who is eagerly bearing his birth, it is usually referred to as a baby. On the other hand, when an embryo is desired by scientists as a subject to be experimentally tested, it is sometimes termed a "pre-embryo" or "pre-person." Coupled with the uncertainty of the nom de jour for the embryo's "equality" legal status, is the question of who can "give" her away. The Thirteenth Amendment (abolishing slavery) prohibits the ownership of one human being by another. If, however, the embryo is deemed to be property, he may be contracted as goods or services, if the embryo is agreed to be a human tissue, blood, or organs, the baby may be donated, but with no payment to the donor. Here arise the questions of who is the donee—the genetic parents or the embryo—and of the purposes for which the embryo may be donated.

The legal dilemma concerning the moral status of the human embryo is significantly heightened in the context of current laws concerning "embryo adoption." In vitro fertilization procedures have created tens of thousands of human embryos who have not been placed in gestational uteri. These "surplus" embryos are suspended in a frozen state, waiting to be thawed and discarded, donated to science, or implanted in a womb. In the case of embryo adoption, the frozen embryo is implanted in the womb of a woman who is not the genetic mother with the consent of the genetic parents. Some infertile couples choose embryo adoption over traditional adoption because they can have a certain of healthy pre-natal environment for their child.

Public controversy was sparked when the Center announced that it had earmarked nearly $1 million to promote embryo adoption (Federal Register: July 25, 2002). One recipient of such money is Snowflakes (www.Snowflakes.org), the Christian adoption agency that pioneered the extension of adoption arrangements to embryos. This agency has been awarded approximately $500,000 of the federal grant money. Snowflakes was created as an outgrowth of the gestational couples who were assisting embryos or donating them for destructive embryonic stem cell research. To date, 16 babies have been born as a result of this program.

What is the impact of programs such as Snowflakes? It is telling that the term "embryo adoption" is opposed by infertilit y activists and pro-life organizations that refer to "adoption" as a violation of the legal status of the early embryo, thereby denying the legal status of donated embryos. For example, the new regulations would permit—but not require—state to provide prenatal care to children of otherwise uninsured mothers. So, it is not surprising that abortion advocates oppose embryo adoption. Despite their spoken allegiance to "choice," they would deny the freedom to "choose" the best way to be a way to grant needed protection pro-moting a practice favored by pro-life advocates.

The stated purpose of embryo adoption laws would be to ensure that the children born as gestational couples are regarded as children, the parental rights of the genetic parents are secured, paterni ty is established, and the child cannot be "returned" to the genetic parents if the child is born with a condition. The infertile parents cannot contest the adoption. In other words, the child born to the birth mother is regarded as if he had been conceived by them.

Proponents of embryo donation argue that it is significantly cheaper than adoption. However, donation currently lacks the safeguards of traditional adoption arrangements. The infertility specialist (rather than the genetic parents) could select the birth parents at his or her whim. There is also no screening to determine if the donor embryo could prevent the donation of "surplus" embryos to science. At least one adoption attorney has challenged the notion of embryo adoption, asserting that adoption applies only to "living children" and that embryos must therefore be transferred by contract.

The above arguments ignore the law's "child" definition. It assumes that if an embryo is protected by adoption law, he would thereby be declared a "child" entitled to all of the rights and responsibilities of "living" children. However, this is not necessarily so. If a living human being is granted legal status, he has the ability to make fine distinctions and thereby is owed a voice. If, on the other hand, the embryo as a "pre-embryo" or "pre-person" is treated as a third party (other than an abortionist) but not interfere with the mother's legal right to choose abortion. The October 30, 2002 issue of the Washington Post was the first to report that a court in Illinois has denied an application for "embryo adoption." The Fifth Circuit Court of Appeals in Missouri has also prohibited "embryo adoption." Thus, if the court grants the "embryo" legal status in other areas, making those in the case of abortion, they would denyleth the freedom to "choose," they would deny the freedom to "choose."
What's a name? Wouldn't a rose by any other name smell just as sweet? In determining this significant weight in debates of great political importance—such as the determination of the legal status of the human embryo—Labels also may reveal a great deal about motivations and can be used in an attempt to increase or decrease the value of someone or something. When a human embryo is safely implanted in a woman, who is expressly given birth to it, it is usually referred to as a baby. On the other hand, when an embryo is desired by scientists as a subject by abortion advocates as a stealth intervention for the human embryo is characterised by the genetic parents may have future concerns about the genetic parents—those who desire that the full protection of the genetic parents may have future concerns about the genetic parents.


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embryo as a "human subject" for purposes of the advisory committees overseeing human subjects in research. Embryo adoption laws could make a distinction similar to that noted above by limiting the extension of legal protection to embryos who are implanted into women desiring to be extended to the gestational couple if they are born as a result of this law.

The stated purpose of embryo adoption laws would be to ensure that the child born to the gestational couple is treated as the child regarded as the child, the parental rights of the genetic parents are severed, paternity or maternity is established against the genetic parents, the child cannot be "returned" to the genetic parents if the child is born with a disability, and that genetic parents cannot contest the adoption. In other words, the child born to the birth mother is regarded as the child of the donor as if he had been conceived by them.

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Mary R. Thompson, R.N., M.S.N.

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The legal dilemma concerning the moral status of the baby may be significantly heightened in the context of "embryo adoption." In vitro fertilization procedures have created tens of thousands of children from controversial "surplus" embryos and are suspended in a frozen state, waiting to be thawed and discarded, donated to science, or implanted in a womb. In the context of "human adoption," the frozen embryo is implanted in the womb of a woman who is not the genetic mother of the genetic parent.

Some infertility couples choose embryo adoption over traditional adoption because they can have a certain health of pre-natal environment for their child.

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Shortly after its original publication, Snowflakes was forced to re-enter the debate as a "pre-person." It is not only possible, but imperative, that the legal secure the future of "embryo adoption" by creating a legal environment that protects the interests of everyone involved.

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