

# Embryo Donation for Pregnancy: Psychology, Philosophy and Policy

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## Introduction

Bioethical talk now goes beyond the context of stem cell research and into discussions of embryo donation for pregnancy. As has been well documented, some 400 000 embryos lay in frozen storage in the United States alone.<sup>1</sup> These embryos result from assisted reproduction; fertility physicians encourage a woman's ovaries to release multiple eggs during one cycle, in the hopes of creating several embryos. In addition to addressing poor pregnancy rates, the creation of several embryos from one menstrual cycle helps mitigate some of the physical, emotional, and financial costs of egg retrieval. Because multiple pregnancies are a worry, usually only a small number of embryos are transferred to a woman's uterus and the remaining embryos are frozen for possible future use. The issues I examine in this paper emerge at the point where fertility treatment ends and there are remaining embryos in frozen storage.<sup>2</sup> Those availing themselves of assisted reproductive technology find themselves in the following sort of position: the decision has been made to discontinue fertility treatment (because, for instance, they have completed their families, or because continuing with assisted reproduction is untenable, emotionally, or financially), yet individuals have a number of embryos in frozen storage. Couples<sup>3</sup> must decide on the fate of their embryos<sup>4</sup>, and the choice traditionally has been between discarding those embryos, and donating them to research. A relatively new option, however, is to donate embryos to other couples undergoing fertility treatment. What with willing donors, and waiting lists of eager potential recipients, there is growing pressure on certain hospitals and fertility clinics to develop embryo donation for pregnancy programs. In this paper, I argue for the importance of the perspective of those directly involved in embryo donation for

pregnancy—those donating or receiving embryos—when designing embryo donation for pregnancy programs.

The paper starts off with an overview of the current embryo situation, a summary of pressing policy questions, and a brief survey of current embryo donation for pregnancy programs. Next, I provide an exposition of empirical work on various attitudes of those with embryos in frozen storage. With reference to two policy questions in particular, I attempt to illustrate how this empirical research might provide much-needed guidance when it comes to designing embryo donation for pregnancy programs. From there, I move to work in philosophical bioethics, work on embryo donation to research—the insights found there apply to our topic, but problematize the guidance the psychological research seemed to be able to offer. In the end, I urge that this guidance, and the work from which it comes, can be useful, but must be tempered by lessons from philosophical bioethics about the possibilities for inauthentic action within the domain of assisted reproduction (and embryo donation in particular). In general, the depth of the difficulties brought forth in this paper—from basic policy difficulties to challenges surrounding what it means to honor potential donors' vulnerabilities—point to the depth of the ethical challenges involved in developing and offering embryo donation for pregnancy programs.

## Preliminary Matters: Starting Points and Assumptions

There are a number of possible ways to getting into this issue from an ethical point of view—through a reliance on/a prioritization of concepts such as reproductive autonomy, say, or through a prioritization of ideals such as the accessibility of reproductive services. Two particular aspects of my present approach should be set out here. The first significant aspect of my approach is that I invoke the philosopher Jonathan Glover's 2003 Tanner Lectures, in which he calls for a 'humanism' in psychiatry. Glover wants to try to understand psychiatric illness "from the inside," as he puts it: he aims to understand "how things seem and feel" to those with psychiatric illness. We need to take seriously, Glover urges, how people with psychiatric illness see themselves, how they describe and make sense of their lives. For Glover, such an approach is valuable quite apart from any connection it might have to developing a cure; it matters because it might help us reach those with psychiatric illness, those often terribly lonely and isolated: this, he says, is "a serious intellectual change, to psychiatry, to psychology, and to philosophy."<sup>5</sup> Here, I apply this challenge to reproductive ethics. I aim to work what we know about the mindset of those donating embryos to embryo

1. S.V. Brakman. 2007. Paradigms, Practices and Politics: Ethics and the Language of Human Embryo Transfer/Donation/Rescue/Adoption. In *Pluralistic Casuistry: Moral Arguments, Economic Realities, and Political Theory*. M.J. Cherry and A. Smith Iltis, eds. Dordrecht, the Netherlands: Springer Publishing: 191-210. As Brakman documents, the US is not alone here. As of 2001, the number of frozen embryos in France was estimated to be over 100 000, with an expected increase of 20 000 per year. In Australia, as of 2003, 104 917 embryos lay in frozen storage. There is every reason to believe these numbers have increased.
2. For a description of reasons for the existence of remaining frozen embryos, see K. Amoroso. Frozen Embryo Adoption and the United States Government. *APA Newsletter on Philosophy and Medicine* 2005; 5: 3-5. For a description of egg retrieval, the preservation of eggs (cryopreservation), and the embryo transfer process, see S.V. Brakman and D. Fozard Weaver. 2007. Introduction: The Ethics of Embryo Adoption and the Catholic Tradition. In S.V. *The Ethics of Embryo Adoption and the Catholic Tradition: Moral Arguments, Economic Reality and Social Analysis* Brakman and D. Fozard Weaver, eds. Dordrecht, The Netherlands: Springer Publishing: 3-24.
3. While I recognize that not all individuals involved are a member of a couple, for ease of presentation, I will use "couples" rather than "individuals and/or couples."
4. Some feminists (for instance Carolyn McLeod and Françoise Baylis, in "Feminists on the Inalienability of Human Embryos," *Hypatia* 2006; 21: 1-14) might object to my use of "their," because of the feminist rejection of the idea that embryos are inalienable to women. I find it appropriate to use the possessive in this context, but I do not defend that here.
5. Jonathan Glover, "Towards Humanism in Psychiatry: The Tanner Lectures on Human Values," delivered at Princeton, February 12-14, 2003. This citation comes from page 513.

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donation for pregnancy programs—how they conceptualize their decisions, the various pressures they might be under, and so on—into our thinking about how such programs ought to be organized. Those facing these decisions about frozen embryos can feel lonely, isolated, and abandoned, and recognition of this, along with the assumption that we ought to minimize potential donors' exposure to such vulnerabilities, underpins the following discussion. Second, this paper focuses upon the position of embryo donors. I do not hold that donor interests take priority over the interests of embryo recipients, that the interests of those in a position to donate embryos are in any way secondary to those in a position to donate embryos. But I do maintain at least that donors' interests are at least one important factor when it comes to designing embryo donation for pregnancy programs. One way of doing this is to make use of work on the attitudes of those with embryos in frozen storage, of those in a position to donate embryos for attempted pregnancy by another couple. Understanding these attitudes can help us gain insight into how to honor donors' interests. This work, then, can serve as a touchstone for us in developing embryo donation for pregnancy programs. Finally, I just note that the theoretical route I take here is not the only way to illuminate the problems at hand, and that the clinical and policy questions I zero in on are not the only problems in need of illumination within this context.

### Examples of Difficult Policy Questions

Difficult policy issues abound. The following list is just a sample of the sorts of questions those designing embryo donations for pregnancy programs will have to grapple with:

- Should the program follow an adoption model? On such a model, for example, home studies would be conducted on potential recipients.<sup>6</sup> Is a donation model, on which no such approval mechanism would be in place, most morally acceptable? What sort of information should be required of potential recipients, generally speaking?
- Should grade and/or preservation date of embryos be disclosed to recipients? (More generally, is it morally defensible to withhold this sort of information from potential recipients, in the name of maintain a system whereby the least recent donations are received first?)
- What sort of information should be required of embryo donors? Only genetically-linked medical information? Relatedly, what sort of mechanism should be in place, if any, for the conveying of medical information from donors to recipients, as it becomes known?
- Along what lines should donors and recipients be matched? For ethnic origin, for example?
- What sort of follow up should occur with embryo donors regarding the results of the donation? (For example, should donors be told that their donation resulted in a pregnancy? In a live birth? In the birth of a singleton, or multiples? In the birth of a girl or boy?)
- Should potential recipient women be subject to a physical examination, in order to determine chances of sustaining a pregnancy? How will such determinations be made, and by whom? Is there any sort of moral obligation to prioritize the recipient who will have the best chance of sustaining a pregnancy?
- What sort of criteria should embryo recipients, and embryo

donors, be required to meet? (For instance, should female donors have to be less than a certain age? Should it be a requirement that embryo recipients be a married couple? Related to this latter question is the higher-level question of to what extent donor preferences should be taken into account in such matters.)

- How much time should elapse between the end of a couple's/individual's fertility treatment, and that couple's/individual's donating remaining embryos?
- After donation, what sort of future contact should occur between various parties?
- Should the program be anonymous or transparent? That is, should the identities of embryo donors be made known to embryo recipients, and vice versa?
- Should there be a limit on the number of family units created from one group of fully genetically related embryos? (That is, in cases where a large number of embryos have been donated, should there be a limit upon how many different couples/individuals can receive embryos from that group?)

### Current Discussion

There are various embryo donations for pregnancy programs up and running, and those who have designed such programs have had, on at least some level, to grapple with the above sorts of questions. Certain policy-related articles can give us some sense of the direction in which established programs have gone in response to some of the above policy questions. For instance, the National Embryo Donation Center (NEDC, in Knoxville, Tennessee) does indeed place certain sorts of restrictions upon embryo recipients. A couples' suitability to receive embryos is evaluated partly by a home study conducted by a licensed adoption agency (which involves an assessment of the couples' emotional, psychological, and financial ability to care for an adoptive child), and only married couples are allowed, to use their language, to "adopt."<sup>7</sup> Further, even though NEDC maintains that transparent (or 'open') arrangements are the appropriate way to go, it offers the option of total anonymity for both donors and "adopters." In the embryo donation program at the University of Iowa's College of Medicine, embryo donors are not financially compensated for their donation, the woman must have been under the age of 40 at the time of embryo cryopreservation, donors are not told the results of the donation, and donors officially terminate parental rights upon donation. With respect to embryo recipients, recipients must be married, "infertile" couples and who are required to meet with a psychologist for counseling and screening for psychiatric illness or substance abuse issues. Recipients can actually choose particular embryos to have transferred, after reading summaries of, for example, physical characteristics and genetic

6. Besides the question of which model ought to be followed, the question of the moral relevance of the use of the *language* of adoption within this context has been discussed. Here again, see Brakman *op. cit.* note 2. In my own practical experience on this front, I have been surprised by the extent to which those responsible for designing policy a) equate choosing the adoption model with taking a position on embryonic status, namely attributing to embryos some level of person-like status and b) opt for either the adoption or donation model on that ground. It seems perfectly plausible that a program could follow the adoption model without committing itself, even tacitly, to a position on the moral status of the embryo. (The reverse, however, would not be true.) I do not pursue this issue here.
7. J. Keenan, Development of the National Embryo Donation Center. Brakman and Weaver, eds., *op. cit.*, pg. 227.

histories of the donating couple. Recipient waiting list priority is given to couples with no children (though childlessness between the couple is not an absolute criterion).<sup>8</sup>

Finally, according to the 2008 Guidelines for Gamete and Embryo Donation (set out by the American Society for Reproductive Medicine, and the Practice Committee of the Society for Assisted Reproductive Technology), potential donors must undergo a psychosocial assessment which looks for evidence of financial or emotional coercion and emotional attachment to the embryo(s), and donor exclusion criteria include any “history of sexual or physical abuse with no professional treatment.”<sup>9</sup> Marital instability serves as an exclusion criterion for donors, and a psychosocial assessment will address potential donors’ emotional attachment to the embryo.<sup>10</sup>

Some justification is offered for the above decisions. For instance, Jeffrey Keenan tells us that NEDC’s stringent recipient criteria are in place in order to address what they take to be the common concern of embryo donors, that their embryos go to a good home. NEDC’s offering the option of a totally anonymous arrangement is justified by the desire to address donors’ concerns that their genetic children (the children the donated embryos grow to be) might at some point get in contact with them, demanding to know why they were ‘given up.’ In general, the desire to ‘minimize barriers’ to both donation and ‘adoption’ was the general motivation in establishing NEDC’s policies and practices,<sup>11</sup> but the question, for example, of whether this attempted minimizing of barriers is in itself morally justifiable is not addressed. The Iowa group defends its decision to not financially compensate embryo donors by referring in the first instance to certain state laws that ban the sale of embryos (without drawing a connection between such laws and the *ethical*). It also cites a desire to avoid coercion, but does not go into any detail whatever about, for instance, what sorts of coercive forces besides financial ones might exist, and how those might be mitigated.<sup>12</sup>

In my view, these discussions underscore the need for a more comprehensive examination of the ethical challenges posed by embryo donation for pregnancy programs. The standing philosophical conversation is also limited, and has for the most part occurred within the framework of Catholic thought, oriented around Catholic doctrine regarding the exclusivity of the marriage bond and the sanctity of life and its beginnings. Within that context, wife and husband become mother and father solely through each other, and human life begins at conception—hence frozen embryos, just as those in utero, are irreducibly valuable and enjoy a right to life. Those opposed to embryo donation for pregnancy from within this tradition, generally speaking, are so against it because it violates the exclusivity of the marriage bond. There are those in favour of “embryo adoption and rescue,” as it is put: on that sort of view, embryo donation for pregnancy is justifiable because it is the only possible way of saving the life of the embryo. Thinkers here vary on whether the gestational mother has the moral obligation to raise the resulting child and there are other variations and permutations on these sorts of themes. The standing discussions are premised upon a certain set of assumptions, and I think that those designing embryo donation programs could benefit from a different sort of examination of the ethical challenges posed by embryo donation for pregnancy programs. In what follows I draw on psychology, and philosophy, in examining how embryo donation for pregnancy programs ought to go, about how we ought to set up such programs, and about how we might justify our decisions on such matters.

### Attitudes of Those with Embryos in Frozen Storage

There is a body of work that we might think of as looking at the

psychology of those in a position to donate their cryopreserved embryos. For our current purposes, the value of turning to this work comes from the insight it provides into attitudes of those with embryos in frozen storage. It is those attitudes that can help us understand donors’ interests—that is, it can help us understand their interests/experience from the inside—and those insights can inform our determinations about how to handle policy challenges. I organize the following exposition of this work along three lines: couples’ conceptualization of their embryos, their views on the nature of parenthood, and couples’ more general reflections on the nature of their decision to either discard their embryos, or donate them to another couple. This recent work looks at couples who have embryos in frozen storage, and are facing or have faced the decision of what should be done with them. It takes various aspects of couples’ thinking about the fate of their frozen embryos, and connects such thinking with the couples’ decisions to either donate embryos to another couple, or to discard them.<sup>13</sup>

We can start by looking at donor attitudes toward stored embryos, and perhaps somewhat counter intuitively, there is a connection between potential donors viewing their cryopreserved embryos as childlike, and opting to discard those embryos (rather than to donate them to another couple). According to this work by Sheryl de Lacey, couples who opt to discard frozen embryos when the time comes tend to see those embryos as childlike; the perception of an embryo having a childlike persona is associated with the decision to discard embryos, rather than to donate them to another couple.<sup>14</sup> As deLacey puts it, The ‘Discard’ group emphasized a projected image of an embryo as a child already . . .” By contrast, those who opted to donate embryos to another couple had a view of their embryos which tended in the direction of seeing those embryos as inanimate cells, or tissue “that had the potential” to develop into a child.<sup>15</sup> Though members of both the donate and discard groups recognized that their embryo had the potential to become a child, those in the ‘donate’ group tended to refer to the embryo in more objective terms than those in the ‘discard’ group. The objective language conveyed the thought that embryos are not yet ‘real’ children. Take, for example, Alida from deLacey’s ‘Donate’ group:

“ . . . we are not donating a child we’re just . . . it is at this stage tissue I guess and children come about from the personality that develops from both environmental as well as genetic [influences].”

8. B.J. Van Voorhis et al. (1999) Establishment of a Successful Donor Embryo Program: Medical, Ethical, and Policy Issues. *Fertil Steril* 71: 604-608.
9. The American Society for Reproductive Medicine and the Society for Assisted Reproductive Technology. 2008 Guidelines for Gamete and Embryo Donation: a Practice Committee Report. *Fertil Steril* 2008; 90, Supp 3:S30-S44: S43. This document intends to set out minimum standards for gamete and embryo donation.
10. S 43.
11. Keenan, op. cit., p. 23.
12. Van Voorhis et al., op cit.
13. deLacey did not look at the psychology behind the decision to donate to research; she takes into consideration only the options to donate embryos to another couple for attempted pregnancy, or to discard them.
14. Sheryl de Lacey (2007) Decisions for the Fate of Frozen Embryos: Fresh Insights into Patients’ Thinking and their Rationales for Donating or Discarding Embryos. *Human Reprod* 22: 1751-1758. These findings regarding embryo conceptualization confirm earlier findings by de Lacey. See Sheryl de Lacey (2005) Parent Identity and ‘Virtual’ Children: Why Patients Discard Rather than Donate Unused Embryos. *Human Reprod* 20: 1661-1669. They also confirm findings by Robert Nachtigall. See R Nachtigall, Becker G, Friese C et al. (2005) Parents’ conceptualization of their frozen embryos complicates the disposition decision. *Fertil Steril* 84: 431-434.
15. deLacey 2007, 1755.

Views on the nature of parenthood and the family also track decisions to donate or discard, according to deLacey's research. Those in the discard group saw the family as "an organic unit, biologically bonded by genetics," and generally held the view that genetics are what determine families. The embryo was seen as a 'virtual' child, a genetic 'replica' of an existing child. These couples believed that 'real' parents were the ones who contributed to the genetic makeup of a child.<sup>16</sup> Those in the 'donate' group, by contrast, tended to emphasize social bonding and social parenthood.<sup>17</sup> Women in particular in this group felt that a child's mother is the *gestational* mother, "the woman who invested her body in the reproductive work of gestation," and "that this motherhood determined ownership."<sup>18</sup> These findings line up with what we saw regarding conceptualizations of the embryo. Where those who discard view the embryo as childlike, they, fittingly, view genetics as constitutive of the family. Those who donate embryos, and view embryos more as inanimate objects, emphasize a social family constitution.

Finally, looking at more general first-person reflections on these decisions, both groups saw their ultimate decisions not so much as positive decisions in favor of certain option, but rather as the consequence of avoiding a certain course of action. For example, those who discarded embryos did not so much see themselves making an active decision in favor of destruction, as they did see destruction as the inevitable consequence of the decision not to donate embryos to another couple.<sup>19</sup> Similarly, the decision to donate was seen as the result of the decision *against* destruction.<sup>20</sup> How might the above sorts of insights into donor attitudes help us when it comes to making justifiable policy decisions/decisions regarding how to structure a program? In what follows, I attempt to demonstrate the usefulness (when it comes to making justifiable policy decisions) of these insights into donor attitudes, using two examples of difficult policy questions: first, the question of whether a program should be anonymous, and second, whether there should be a limit to how many family units can be "made" from one large group of related embryos. We will first take the issue of whether an embryo donation for pregnancy program ought to be anonymous or transparent.<sup>21</sup>

## Two Policy Questions

### Anonymity versus transparency

The main question here, again, is whether donors and recipients should be known to each other and if so, to what extent. Let us start by looking at the relevance of the fact that those who donate embryos tend to see those embryos as closer to inanimate clusters of cells than children. What would it be like, from the donors' perspective, to donate those embryos to those about whom the donors know nothing? What kind of insight does this yield for us? We can imagine that since donors tend to not see their embryos as children, donating those embryos to a couple about whom those donors know nothing is unlikely to subject those donors to undue emotional risk. Of course, the idea of emotional risk is complex and somewhat vague—what we mean to get at here is the risk associated with doing something one might find emotionally difficult (even if one does not feel such difficulty at the time of the decision's being made) and to which there could be a significant emotional cost (which one may or may not recognize). This concept of emotional risk in general gets a lot of traction within reproductive ethics, and the vulnerabilities of those seeking assisted reproduction is well discussed.

This is because a cluster of cells is not an object of concern in the way that more a childlike embryo is. This is very much in keeping

with potential donors' conceptualizations of the family. If the family is socially rather than genetically constituted, as deLacey's work indicates donors tend to believe, then in donating an embryo, one is not donating one's child. From the point of view of the donors, the resulting child's family will be, on such a conception, the recipient family—the embryo is not leaving its 'family' in being donated. This belief about families might contribute to a certain 'ease' of donation, if donors in at least some sense believe that no family is being disrupted. The emotional distance created by this mindset, by such envisioning, could allow for a side-stepping of a potential emotional vulnerability and risk related to donating to a couple about whom one has no information.

On the other hand, that same lack of emotional vulnerability could allow for a certain ease with a transparent program—knowing the identities of the recipients, and other background information about them, might be of no real psychological consequence, given the relative lack of emotional attachment their conceptions of the embryo and of the family could engender. This is because there may be less of a possibility of feeling uneasy by recipients knowing the donors' own identities, if donors view themselves as donating inanimate cells (rather than their own children). Similarly, there may be less at stake for donors in coming to know the identities of recipients, because there might not be the risk of being emotionally attached to the embryo that they have donated, and so "getting to know," or knowing anything about the recipients, would not carry the risk it might if the donors were so attached. (For instance, knowing a recipient's personal details could be agonizing for a donor if that donor felt as though the recipient had received the donor's own child. If the very thought that *one's child* has gone to someone else is tormenting in itself, one knowing that someone else's personal details could make the situation even more difficult to accept, by making it more vivid, and in some sense more real.) So, given what we can think of as the donor mindset, and what I have suggested is an accompanying (and relative) lack of emotional attachment to the donated embryo, it would seem that either an anonymous, or a transparent, program could be justified.

### Limits on numbers of family units

Now to our second policy issue, which deals with the situation in which there is a large batch of fully genetically related embryos in frozen storage? We can imagine the case in which there are, for example, twenty-four embryos in frozen storage and that the decision has been made to donate those embryos to those undergoing fertility treatment. Further, let us establish that there is a limit of donated embryos that each couple can receive in total, let us say six. How many family units, or nuclear families, ought to be created per one (large) collection of fully genetically related cryopreserved embryos? We should keep in mind here that creating more than one family unit will bring about the situation where fully related siblings are living in different families, without knowing each other exists (assuming the ideal goals of a live

16. de Lacey 2007, 1754.

17. deLacey, 1751.

18. De Lacey, p. 1754.

19. De Lacey, 1753.

20. De Lacey summarizes the point by saying that something her study has shown is that the final decision is characterized "primarily by what patients find morally abhorrent, rather than a choice of the most attractive option, as it is driven by avoidance of the worst possible outcome" (1757).

21. The selection of these two particular policy issues might seem rather arbitrary. I take them to be paradigmatic of the complexity of the various policy challenges here, but not *especially* complex.

birth, and healthy, living children). Further, this possibility of fully genetically related siblings living in the same community would be exacerbated by a program's requirement that donors and recipients are matched for ethnicity, as the siblings could well be living in a hospital area's ethnic community.

There is the possible scenario according to which there are donated embryos—embryos that belong to this large batch of *donated* embryos—that end up being destroyed, as the result of a policy that says that there is a limit to the number of family units that can be created from one batch of embryos. The consequence of limiting the number of family units could have to destroy some of the donated embryos (in order to adhere to any established embryo-per-family limit). Is such destruction a waste of a precious resource? What is the moral relevance of the fact that those embryos were donated not designated for destruction? In at least some way, what is called for in deciding about this policy issue is a weighing of the value of these embryos (and what would be lost in destroying them, particularly given their status as embryos that have been donated for pregnancy), against the value of creating as many family units as the batch would allow. There are good reasons, it may be argued, in favor of limiting the number of family units created from any one batch of fully genetically related embryos.<sup>22</sup> As just mentioned, there is the likely possibility of fully genetically related siblings living in the same community, and along with this, the possibility of siblings unknowingly marrying. Besides this consideration, there is the more nebulous one that there is something unsettling, if not ethically problematic, about one not knowing that one had any full siblings outside of one's own nuclear family, while other people (e.g. fertility clinic staff) do know about this.<sup>23</sup>

Here again, the recent psychological research into donor mindsets might seem to provide us with some direction as to how to establish policy on this matter. Along the lines of our previous thinking on our first question, those donating tend not to view the embryos as children, so the destruction of donated embryos could be justified. Others destroying the donated embryos might not bother donors, given the donor mindset. The destroying of donated embryos that will not be implanted because the number of family units is being limited could be justifiable not just in light of the balance against the problems of not limiting family units already reviewed, but with reference to the mindsets of those who will be donating. So, it seems that the required destruction of donated embryos could be justified, as these donated embryos are not viewed by the donors as their being their own children.

Attitudes toward the constitution of the family fit with this picture. Recall that those donating tend to see the family as socially constituted; family tends not to be defined genetically. If anything, this tells us that destruction of (donated) embryos in the name of limiting the number of family units could be justifiable. Here again, the emotional distance afforded by such a stance could generate some ease with the destruction of donated embryos.<sup>24</sup> This supports the possibility that the destruction of donated embryos could be justified. Taking as central the vulnerabilities of donors, it seems that limiting the number of family units could be justified.

Donor attitudes do not straightforwardly churn out solutions to particular policy dilemmas; we do not have a decisive, foolproof mechanism here. I do want to suggest, though, that deLacey's insights, in conjunction with the general goal of making an embryo donation for pregnancy program respectful of potential donors' vulnerabilities, seems to be able to operate as a foundation from which to develop and justify policy and program decisions.

## Insights from Philosophy

We need; however, to push on the possibility that insights into the donor mindset can give us guidance in designing embryo donation for pregnancy programs. What if the attitudes of those with embryos in frozen storage are more fluid, or complicated, than we have been assuming? Insights from philosophy complicate this picture we have been working with thus far. The work we turn to now is feminist work on embryo donation for research. Assisted reproduction has, of course, received philosophical treatment from feminist philosophers who have tended to criticize it (generally) as oppressive and as a deliberate mechanism of patriarchal control.<sup>25</sup> Here we turn to philosophy, in particular to work by Carolyn McLeod and Françoise Baylis on embryo donation for research and inauthenticity: what reasons do we have for thinking that inauthentic embryo donation to research is a serious possibility? McLeod and Baylis look at in particular at the question of whether patients should be asked to donate their fresh (as opposed to frozen) embryos for stem cell research. They conclude that patients should not be asked to do this, because 'donating fresh embryos suitable for transfer is contrary to the interests of female IVF patients.'<sup>26</sup> The basic argument of their paper is that women ought not to be asked to donate fresh embryos to research, because they are too likely to do so inauthentically, because of the likelihood of their operating under the shroud of misunderstanding about their situation. One task undertaken in the paper is to identify barriers, or at least potential barriers, to autonomous donation of fresh embryos to research. As McLeod and Baylis have it, the holding of mistaken beliefs is the leading contender when it comes to barriers to autonomous reproduction; three such beliefs are set out.<sup>27</sup> There is the mistaken belief that fresh embryo donation is somehow in one's reproductive interest; there is the mistaken belief that although fresh embryo donation is generally not in women's reproductive interest, being in one's last cycle of IVF grants one an exception from this; and there is the mistaken belief that one has an obligation to be altruistic and act in others' interests by donating one's fresh embryos to research. Each of these mistaken beliefs is taken to work to prevent autonomous fresh embryo donation because the donation is undertaken under the influence of a mistaken belief.

There is every reason to believe that similar barriers to autonomous donation exist within the context of embryo donation for pregnancy programs. First, returning to the idea that embryo donation is in one's reproductive interest, if a physician asks one to donate embryos for pregnancy, one might believe that it is one's interests to do so, simply because the person responsible for their care is asking them to donate. Second, take the mistaken belief that while, it is generally not in the

22. The situation of their being such a large batch of embryos in frozen storage might seem unlikely, but it is certainly not impossible.

23. Granted, this happens in other sorts of situations, e.g. sperm donation. But that it happens under different conditions does not necessarily mean that it is morally unproblematic to design a program that perpetuates this state of affairs.

24. On such an arrangement, it is possible that donors would not find out that their donated embryos were, in the end, destroyed. Nonetheless, I assume we ought to design embryo donation for pregnancy programs assuming a transparency on such issues.

25. For a detailed summary of feminist conversations about (and criticisms of) assisted reproduction, see S.-V. Brakman and S.J. Scholz (2006) Adoption, ART, and a Re-Conception of the Maternal Body: Toward Embodied Maternity. *Hypatia* 21: 54-73

26. C. McLeod and F. Baylis (2007) Donating Fresh versus Frozen Embryos to Stem Cell Research: In Whose Interest? *Bioethics* 21: 465-477.

27. Starting on p. 470, at the bottom.

reproductive interest of most couples to donate fresh embryos; one is separate from that group, because one is in one's last cycle of IVF. The analogue within the embryo donation for pregnancy context would be that a couple has completed their family, or has for other reasons stopped IVF treatment; either that, or their embryos have been in frozen storage for enough time such that legislation mandates that the embryos must either be discarded or donated. To continue the analogy, in these sorts of scenarios the couple would believe that they no longer have any need for their frozen embryos, and consequently that donating or discarding would not run counter to their own reproductive interests. Third, it is easy to imagine a situation in which a patient feels an obligation to be altruistic and act in others' interests by donating frozen embryos to a couple undergoing fertility treatment (despite any misgivings she may have about donating). There is nothing unique about donating to research when it comes to this tendency for women (in particular) to feel pressure to be altruistic. One could even imagine that that pressure could be greater within the embryo donation for pregnancy context, in which women with leftover embryos could feel certain solidarity with other women struggling to become pregnant.

McLeod and Baylis' claims regarding barriers to autonomous embryo donation to research are convincing, and at least some of them apply to our current context. We can see that the barriers to autonomous fresh embryo donation brought to light by McLeod and Baylis are relevant to embryo donation for pregnancy.

## Returning to Our Two Questions

How do such barriers to autonomous embryo donation for pregnancy donation, and the resulting possibility of inauthentic embryo donation, complicate any policy guidance available from the psychological insights we have reviewed? We are returning to our initial questions, but with a different understanding of what donor attitudes could actually be like. I now want to demonstrate how the guidance we seemed to have been able to receive from insight into donor mindsets has been disrupted, disrupted by the very real possibility of inauthentic donation. We will see, I think that, this possibility disrupts the initial traction deLacey's work seemed to give us. We can think of there being a switch in mindset here. That is, if those donating actually have done so under the shroud of misunderstanding—that is, if they have done so in authentically, non-autonomously, their action is in some sense not the action that they would have carried out had they not been subject to certain forces. If this is so, the mindset deLacey identifies as corresponding to donation would not actually be the mindset embodied by the donor. The donor would, on this line of thought, be more likely to embrace the mindset deLacey associates with destruction, that is, one apt to view the embryo as closer to a child than an inanimate object. This has repercussions for the ease with which deLacey's work can give us policy guidance; we now have a different take on our two questions. Following the same general structure of the previous section, let us return to the anonymity/transparency issue, considering donors' conceptualization of the (donated) embryo, but now also recognizing the possibility of inauthentic donation.

## Anonymity versus transparency revisited

Someone donating his or her frozen embryos in authentically—that, one donating when they explicitly do not want to, or it is on some level against their will, or they have been coerced in some way—might well actually have the mindset of one who would destroy one's remaining embryos, rather than donate them. Recall that those who opt to discard remaining embryos, rather than donate them, tend to see their embryos

more as unborn children, as opposed to clusters of inanimate cells. In the entirely possible scenario in which one donates in authentically, we could have someone donating with the mindset with respect to their relationship with their embryo(s) of one who would opt *not* to donate but to discard their embryos. That is, we could have a situation in which an individual or couple donates an embryo that they actually view as something like a child. Earlier, our tentative thinking was that anonymity and transparency both seemed justifiable. We can now see that anonymity no longer seems as unproblematic as it did initially, at least from the donor perspective. It is no longer unproblematic because of the likelihood of inauthentic donation, and our previous connection between donor actions, as it were, and that donor's conceptualization of the embryo being donated, has been disrupted. It has been disrupted because we cannot take for granted that those donating embryos embody the mindset regarding those embryos (that they are closer to inanimate clusters of cells than children) attributed to donors by deLacey's research. That attribution, recall, allowed us to in some sense justify an anonymous program. We now have the case where one donating an embryo could see that embryo as a child—and here we get into what matters. For what we potentially have now with embryo donation programs is not just a situation in which women (in particular) will face pressure to donate embryos "against their will," but one in which the risks involved in donating against one's will are very real, because of the (potential) situation in which a donor is donating an embryo to which they could have a sort of attachment. This is a special kind of suffering, and one that we ought not to set up the possibility for. It is not just that inauthentic embryo donation is a real possibility, which itself is unsettling. It is that what we have learned about the psychological mindset of donors makes it all the worse, and introduces a level of emotional risk, in addition to any (emotional) risk involved in engaging in inauthentic action. Those donating might actually view their embryos as childlike, in which case their emotional vulnerability might well be higher than we were assuming during our initial discussion. This might mean that in fact, there is something threatening about donating to recipients about whom one knows nothing. So, the ease we might have had with an anonymous program is disrupted.

When we turn from donors' conceptions of embryos, to their views about the constitution of the family, we again see that any clarity gained from deLacey's work is complicated by the possibility of inauthentic donation. Recall that deLacey's research tells us that those who donate tend to view the family as being socially (rather than genetically) constituted. This, we had preliminarily concluded, seemed to justify either an anonymous or a transparent program, on the grounds that whether an embryo donation for pregnancy program is anonymous or transparent is unlikely to deter, or otherwise have an emotional impact on, donors, given donors' views about the constitution of the family. We can now see, though, a pattern similar to what we saw above: now that we have introduced this switch in mindset by acknowledging the possibility of inauthentic embryo donation, deLacey's findings take on a new significance, as those (in authentically) donating may well have a conception of the family according to which it is bounded by genetics. Here again, the emotional risk revealed is significant. We can imagine, for example, the feeling that one is donating something that will turn into something that is one of theirs—here again, we reveal the danger involved in inauthentic donation. We cannot assume, I am urging, that views about embryos, or the constitution of the family, correspond to the outward action of donating or discarding, in the way deLacey's research sets out that corresponding, given the significant possibility of inauthentic donation.

### Limits on numbers of family units revised

Going back to our second policy issue, the issue of whether there should be limits on the number of family units created from each group of genetically-related embryos, recall that recourse to deLacey's findings suggested that limiting family units, and the possible destruction of donated embryos as a consequence, seemed justifiable with reference to the donor mindset, and how that might be experienced by the donor. Again, going back to our initial analysis, we saw that the issue really boiled down to the moral permissibility of destroying embryos that had been donated (as the limitation of family units would necessarily involve the destruction of some, where large batches are involved). I had tentatively concluded that the destruction of donated embryos in the name of limiting the number of family units could be justified from the perspective we are assuming, because the donors' mindset is one according to which the embryo is not a child.

Now, though, the justifiability of such destruction is on much shakier ground, but here the case is not quite as straightforward as the case of the anonymity/transparency issue. That is because here, we know that those who view their children as embryos opt for destruction—and if our worry stemming from the recognition of inauthenticity is that those in authentically donating might harbor the authentic desire to destroy those embryos (because they in fact are closer to seeing them as children than as inanimate clusters of cells), then destruction in the name of limiting the number of family units might not be morally problematic. But here we must notice that in such a scenario, someone else would be destroying the embryos, as a result of their own reasons—and this might offer no comfort to the inauthentic donor (assuming they were made aware of it—even if they were not, that not knowing would be harm too). So, even though destruction might take place, it would take place at someone else's discretion—hardly satisfying

the underlying desire of one who donates in authentically to have embryos destroyed full stop, rather than donated, even if eventually destroyed. Similarly, looking at notions of the constitution of the family, the inauthentic donor could view the family as being genetically constituted—and this could render the destruction of donated embryos more of an ethical problem. If donation is inauthentic, and one donates an embryo one actually views as childlike, it is possible that donors could pay a heavy emotional price for this limiting of family units.

### Conclusion

Those in positions to influence the running of embryo donation for pregnancy programs really must work hard to reduce the likelihood of inauthentic donation (through pre-donation counseling, for example), because of the very specific way in which it heightens a donor's vulnerability in this sort of case. I hope to have shown that the guidance about conceptualizations of the embryo, and ideas regarding the constitution of the family, are useful, but we can have confidence in them only if outward action is actually connected to mindset in the way deLacey suggests that it is. When donation is inauthentic, or non-autonomous, it will not be. What I have tried to show is that insight into donor attitudes can help us develop a way of thinking about how to do embryo donation for pregnancy, and how to justify the policy or program decisions that we make. This isn't a determinative way of thinking about this topic –it does not solve the problems on the table. Certain sorts of input (a donor attitude) will not necessary result in a specific output (a certain aspect of a donation program should be run in a certain kind of way), but I think we make progress here in pushing forward our thinking on these matters. But we will only think well about any progress we have made when we recognize the insights of those who have thought about embryo donation in other contexts, that there are barriers to autonomous embryo donation.

This article was originally published in a special issue, [Ethics: Reproductive Technologies](#) handled by Editor(s). Dr. Stephen Napier, Villanova University, USA