

American Society for Reproductive Medicine: defining embryo donation

The Ethics Committee of the American Society for Reproductive Medicine

American Society for Reproductive Medicine, Birmingham, Alabama

Building families through adoption of children has been supported by human society throughout history. Building families through reproductive donation of surplus embryos, in contrast, has become an option only since the dawn of assisted reproductive technologies. The ethical appropriateness of patients donating embryos to other patients for family building, or for research, including stem cell research, is well established and has been affirmed by this body and many others. (Fertil Steril® 2009;92:1818–9. ©2009 by American Society for Reproductive Medicine.)

Two family-building options that provide children who are typically genetically unrelated to the individuals raising them involve: 1) the use of donated embryos; and 2) the adoption of living children.

Donation of embryos to support the family-building efforts of others is an important option for patients considering the disposition of cryopreserved embryos in excess of those needed to meet the patients' own fertility goals.

Embryos are deserving of special respect, but they are not afforded the same status as persons.

Adoption refers to a specific legal procedure that establishes or transfers parentage of existing children.

Application of the term "adoption" to embryos is inaccurate, misleading, and could place burdens that are not appropriate for embryos that have been donated upon infertile recipients.

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based on the American Society for Reproductive Medicine (ASRM) Ethics Committee's consideration of the embryo's status.

In previous reports, this Committee has made clear its view that embryos should be accorded an elevated moral status compared with other human tissues, but that they should not be viewed as persons (3–5). Indeed, many of the publications of this Committee refer as a starting point to this description of the embryo first published in 1986: "The (pre)embryo is due greater respect than other human tissue because of its potential to become a person and because of its symbolic meaning for many people. Yet, it should not be treated as a person, because it has not yet developed the features of personhood, it is not yet established as developmentally individual, and it may never realize its biologic potential" (6).

The use of donated embryos for family building is an established successful therapeutic option for the infertile. Like gamete donation, it has resulted in the birth of many children in the more than 25 years the procedure has been in use. The use of donated embryos can provide patients in need a way to conceive that can be less complex and less expensive than gamete donation. It can also provide the donating patients with a sense of fulfillment as their donation helps other patients build a family.

Embryo donation for family building is recognized and regulated by government agencies in the United States and other countries (7, 8). In the United Kingdom, the process falls under the comprehensive system of regulation of all aspects of assisted reproductive procedures. In the United States, the Food and Drug Administration oversees the process through comprehensive regulations that apply to all donated human tissues, reproductive and nonreproductive alike.

Adoption of existing children is another important option available to help infertile men and women build their families, also providing loving homes to children who need them.

Government plays a considerably more extensive role in the adoption of existing children than in embryo donation for family building. In 21st-century America, adoption is a specific legal procedure, and the term has a very specific legal meaning: "adoption, n. 1. The creation of a parent-child relationship by judicial order between two parties who usually are unrelated; the relation of parent and child created by law between persons who are not in fact parent and child. This relationship is brought about only after a determination that the child is an orphan or has been

abandoned, or that the parents' parental rights have been terminated by court order" (9).

Every state in the United States has an adoption statute, and they all deal with changing or establishing parentage of an existing child. The legal term "adoption" can not and does not apply to embryos, which hold the potential for life but are not persons. In fact, *Black's Law Dictionary* explicitly defines "embryo adoption" as slang: "embryo adoption. Slang. The receipt of a frozen embryo that is implanted into a recipient's womb. Donors must waive all parental rights before the recipients of the embryo assume legal ownership or custody. The process is not considered to be a legal adoption, because American law does not treat embryos as children" (9).

The use of slang can sometimes be harmless; in this instance it is not. Equating an embryo with an existing child and applying the procedural requirements of adoption designed to protect existing children to embryos is not ethically justifiable and has the potential for harm. First, the ethical directive to protect an existing child is not applicable to human embryos, which are not persons. Second, the procedures would place unwarranted burdens on the recipient patient. Home visits, legal fees, and judicial review are all important components of adoption. There is no justification for applying these components to infertility patients who already face burdensome medical procedures in the pursuit of their fertility goals.

"Embryo adoption" agencies seek to recast the experience of embryo donation in terms of an "adoption" and impose requirements simulating those of legal adoption. In many cases, these requirements

entail payment of substantial fees to the agencies by patients who need donated embryos to build their families.

Requiring infertile patients who need donor gametes or patients who need donor embryos to suffer the imposition of unnecessary administrative and legal trappings of adoption and the costs that accompany them is not ethically justifiable. Indeed, writing in 1994, this Committee argued that the experience of embryo donation "more closely approximates normal human reproduction than it does traditional legal adoption" (3). Fifteen years later, that statement remains correct. The donation of embryos for reproductive purposes is fundamentally a medical procedure intended to result in pregnancy and should be treated as such.

The Practice Committee of the ASRM has developed guidelines for embryo donation that address medical screening, psychological counseling, informed consent, and the transfer of rights over the embryos from donor to recipient. These guidelines, like corresponding guidelines for the donation of eggs and sperm, provide a framework for safe and ethical treatment of donors and patients requiring donated embryos for their treatment.

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