

Issues and Ethics Related to Embryo Placement: A National Discussion

Anita J. Catlin

Hot Topic! What do you think? Send your comments about this topic to pnjrn@aaj.com. This article discusses a sensitive issue that is complex and provocative, and will undoubtedly stimulate a variety of opinions. The opinions and assertions contained here-in are the private views of the contributors and do not necessarily reflect the views of *Pediatric Nursing Journal* or the publisher.

There is growing debate over the transfer, or “placement,” of embryos. During the first national conference on embryos (*Emerging Issues in Embryo Adoption and Donation*), funded by the U.S. Department of Health and Human Services, Thomas C. Atwood, President and CEO of the National Council for Adoption, expressed his views and concerns regarding embryo “adoption.” This article will highlight Mr. Atwood’s presentation, offering a chance to examine and reflect on the scientific questions and moral implications of this new procedure.

In May 2008, a conference was held that has great ramifications for pediatric advocates in their work and as citizens of our country. The meeting was the first national conference on embryos, called “Emerging Issues in Embryo Adoption and Donation.” The main attendees of the conference were child adoption advocates and property attorneys who had gathered to hear about a government-sponsored program of embryo adoption. This author was one of the few ethicists present. Also present were couples who had relinquished their in vitro embryos for adoption, as well as couples who had implanted and given birth to these embryos and were now raising these children as their own.

The Bush Administration (2005) has referred to these children as “Snowflake” babies. The conference, associated videos, and promotional materials were funded by U.S. Department of Health and Human Services Grant #EAAPA941002. The U.S. Government funded the National Embryo Donation Center with 10 million dollars in 2008.

A definition of the word embryo is important because this word may have differing meanings in the scientific, religious, and political communities. The *embryo*, as per this author and according to *Medical Dictionary Online* (2008), is “the prenatal stage of mammalian development characterized by rapid morphological changes and the differentiation of basic structures.” It is presently known that a human embryo is created by combining male spermatozoa and female ova material. If the joining is successful and the two genetic sources become one, this is called a fertilized zygote. If the zygote begins to divide and differentiate, it is

called an embryo. Prior to the 1980s, this process occurred only within the human womb (although it rarely could form ectopically outside the uterus). The scientific development of in vitro fertilization allowed embryos to be created in a petri dish for future implantation. Data from the Centers for Disease Control and Prevention (CDC) (2005) report 422 fertility clinics in operation in the U.S., with 134,260 artificial reproduction cycles performed, resulting in 38,910 live births (deliveries of one or more living infants) and 52,041 infants. Women world-wide have taken advantage of the ability to have embryos placed within their uterus for possible gestation and delivery. Quite often, more embryos are artificially created than used. The excess embryos are typically frozen and stored in liquid nitrogen. It is estimated that 500,000 frozen embryos are in storage in the U.S.

Many property attorneys specializing in the transfer of embryos attended the Embryo Adoption Conference. These embryos are not live children, and because only live children can be legally adopted in the U.S., the transfer of embryos from one family to another is considered a transfer of property. Also in attendance were those who staff U.S. adoption agencies, who sought to learn about this new resource for persons wishing to enlarge their families. Most attendees were examining the process for the first time. The conference was a radical and ground-breaking event.

Physician Jeff Keenan, Medical Director of the National Embryo Donation Center in Knoxville, TN, conducted the conference with an upbeat tempo, believing that embryo adoption was a good thing to do. Most speakers were associated with fundamentalist Christian religions and interpreted that the frozen embryos were children in cold storage. Lawyer Samuel B Casey, executive director of the Christian Legal Society, stated that disposal of these frozen embryos or their use for research would be a “holocaust” of 500,000 human lives. An underlying current of the conference was that using human embryos for stem cell research would constitute “killing.”

A panel of parents who donated their embryos addressed conference attendees. This was not a simple issue for them. One parent referred to giving up her embryos as similar to “having an abortion.” Another parent said this was the hardest thing she had ever done. On the other hand, parents who had accepted the embryos, and implanted and given birth to them, had the happy glow of new parents of healthy children.

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The 500,000 frozen embryos were offered as a new source for families wishing to adopt.

This author, without accepting the fundamentalist rhetoric and the negativity about stem cell research, sees the embryo transfer as morally possible. Indeed, if the process works, embryos from well-funded, healthy, donating couples, with potentially good DNA, will now be available. Women who accept these embryos will be given the opportunity to experience the joy of gestating and delivering their own child. This procedure is currently available to those who can finance it.

Funding the process from the U.S. federal government seems less morally neutral. The discussion seems tied to beliefs about when embryos and fetuses become human beings. One must worry that this will affect children in foster care who wait for adoption. When so many other areas in health care go unfunded, the choice to promulgate this new form of technology is questionable.

Thomas C. Atwood, President and CEO of the National Council for Adoption, spoke at the embryo conference. His speech questioned the use of embryos as potential

adoptees. He raised several issues about embryo transfers. He appeared to have solid questions that should be answered as this new advancement in science proceeds into the future. Excerpts from Atwood's remarks are reported here with his permission.

For those seeking additional information about the embryo placement process, please contact the National Embryo Donation Center at www.embryodonation.org

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An Adoption Advocate's Perspectives on Embryo Placement

Thomas C. Atwood

The National Council for Adoption's (NCFA's) mission is to promote the well being of children, birthparents, and adoptive families by advocating for the positive option of adoption. We do so by promoting infant adoption, adoption out of foster care, and intercountry adoption, in the fields of public policy, media and culture, and adoption practice. Obviously, NCFA considers part of its role to be protecting the institution of adoption. NCFA decided in its November 2005 Board Meeting that NCFA takes no position on embryo placement. We do have concerns about the name embryo "adoption."

The practice of "adopting" embryos is fraught with legal, moral, ethical, and spiritual issues. Establishing policies and practices to guide it is and will continue to be highly controversial, complex, and imperfect. Compare this status to adoption, which is well established, respected, and loved. For NCFA and this adoption advocate, that incompatibility raises concerns regarding the use of the name "adoption." These concerns are not a judgment of the practice of embryo placement for pregnancy and parenting. Nor are they a judgment regarding all the other associated issues, such as in vitro fertilization, the beginning of life and status of the embryo, abortion, stem cell research, cloning, genetic selection, surrogacy, or reproductive technology in general.

We are concerned with legal clarity. Adoption is a well-defined legal act; one adopts a legal "person." The embryo, however, is not recognized as a legal person. The law generally treats the embryo as property, creating a legal quandary: If the embryo is property, can one adopt a piece of property and make it a member of one's family? If the embryo is a person, can one transfer ownership of a person? Calling this practice "adoption" confuses the clear legal meaning of adoption. Calling this practice "adoption" also associates adoption with the numerous moral controversies surrounding embryonic, beginning of life, and reproductive technology issues. In so doing, it potentially makes adoption a means to an end and may also undermine the moral consensus regarding adoption, as well as any potential consensus on the practice of embryo placement.

In addition to a non-position on embryo transfer, the NCFA also maintains a non-position on abortion. We simply present adoption as a positive option for woman with an unplanned pregnancy, not as part of either a pro-life or pro-choice agenda. We believe this is a more effective way to enable women to consider adoption. Similarly, because the name "adoption" implies a legal "person," advocates of embryo placement may lose some potential allies who might support the practice if its name was less loaded. Considering how sensitive the adoption community is to adoption vocabulary, embryo placement advocates may wish to use a terminology that is accurate, yet neutral, on the undecided and divisive issues. "Adoption," "donation" and "transfer" are loaded terms. "Adoption" means the embryo is a person; "donation" and "transfer" mean the embryo is property. Each of these names takes a divisive, win-lose position. "Placement," on the other hand, means the embryo could be either, and hence it does not create a controversy in the very naming of the practice. Placement "for pregnancy and parenting" identifies the specific purpose and distinguishes this embryonic practice from others.

I would now like to present principles related to adoption for your consideration.

Principles and Practices #1

Adoption should serve the best interests of children. This is the fundamental principle of adoption. Families for children, not children for families. Correspondingly, does a frozen embryo, which resulted from in vitro fertilization, have a best interest? Is the embryo "entitled," so to speak, to the same protections that the adoption process offers children, such as parental rights, relinquishment procedures, home studies, background checks, and legal restrictions on who may adopt? Or should greater risks be taken in the placement of embryos because the alternative is a continued frozen limbo or disposal? A strong best-interest practice in adoption is to place siblings together. Should clients seeking embryo placement be required to receive for pregnancy and parenting all the "sibling" embryos, as it were, stored by the genetic couple?

Adoption should always be a social service in the best interest of the child, not an economic transaction. Adoption policy and practice tries to avoid financial incentives in placement decisions. Can and should embryo placement do the same, and if so, how, when the embryo is not recognized as a person? What standards should there be for agency fee disclosure?

How should law and practice ensure that embryo placement is ethical and that the embryo's "interests," if this is an appropriate term, are served? What professional standards should there be for embryo placement service providers, and how can they be established and enforced? Should the practice of embryo placement be restricted to licensed adoption agencies? What about attorneys and doctors? What about investors and entrepreneurs? If embryos are treated as property, can ethical practice be ensured and the "potential" children protected? How should law and practice ensure that the parties to embryo placement are properly educated and counseled both before and after placement?

And finally, what about the best interests of born children? Is it appropriate to encourage prospective adoptive parents to receive embryo placements when there are countless millions of born children of all ages around the world in need of adoption? Does embryo placement compete for prospective parents with the adoption of children in foster care? These are difficult questions.

Principles and Practices #2

Making an adoption plan for a child is a loving and responsible act. Almost all birthmothers choose to relinquish a child to adoption on the basis of their loving and responsible consideration of their child's best interests. They want their babies and children to have loving, stable families and homes, with both a mother and father. But unlike birthmothers, who usually see their pregnancies as the result of an unfortunate occurrence, many genetic couples with frozen embryos knowingly chose to produce "excess" embryos through in vitro.

Are genetic couples as morally exonerated, so to speak, as birthmothers are? Do genetic parents have a responsibility to attempt to impregnate the genetic mother with their own embryos? Are genetic parents when they give away their embryos as morally sympathetic as birthmothers, and does that matter? Perhaps allowing the embryo a chance to live and giving an infertile couple an opportunity to parent is loving and responsible, too. But did the non-regard to the embryo encourage the in vitro practices that led to hundreds of thousands of embryos in frozen storage?

Principles and Practices #3

Growing up adopted is healthy and normal. People who were adopted into their families generally grow up as healthy and productive as people raised in their biological families. Children who have suffered abuse or neglect can present greater challenges but they, too, are almost always successful when adopted into loving families. Many adopted children ask the question at some point, "Why was I adopted?", and some may feel rejected and abandoned by their original parents. They generally are able to resolve those feelings with the knowledge that their birthparents simply were not able to parent them and placed them out of love and bravery. They are also satisfied by knowing that the parents who adopted them sought them out and love them as much as any parent loves a child.

What are the comparable questions that a child born

through embryo placement might face? Might there be more difficult soul-searching questions? Am I an "excess embryo?" Was I "manufactured" for one couple's purposes, and then when I wasn't needed, left in cold storage, until by random luck another couple found me? Parents of children through embryo placement may have a greater challenge in presenting a positive narrative of how the child came to be born and in their family.

Principles and Practices #4

Adoptive parents are the real parents. Adoptive parents are the adopted person's real parents, for one thing, because the law says so. Adoption law provides for a clear legal transfer of parental rights and responsibilities in almost all cases. The rare custody battles in adoption usually arise from disputes over the termination of the biological father's parental rights.

Is the relinquishment and transfer of genetic parental rights in embryo placement complicated by a lack of clarity regarding the parental status of the genetic couple? Since the embryo is not legally recognized as a person and one cannot parent a non-person, what parental rights are the genetic couple relinquishing in embryo placement? Do these potential rights only come into existence when a child is born? And if so, can they be legally relinquished before the child is born? Perhaps this is more fully resolved in the law than I am aware of, but it seems ripe for traumatic litigation.

Morally speaking, the adoptive parents are also the real parents because they have been chosen through a careful process involving all the responsible parties and because they are the ones who parent. Nevertheless, almost every adopted person has been asked, "Have you ever met your real parents." There is a cottage industry that believes that adopted people cannot have healthy identities without knowledge of their genetic roots and without contact with birthparents. The truth is that the vast majority of adopted people have as healthy identities as anyone else, with or without this genetic contact.

Children who are born into their families through embryo placement can probably expect to be asked this same question if their embryo placement is known. And they can probably count on being told that they cannot be whole without complete genetic information. We will have to wait and see whether the technological way they joined their families creates any greater challenges to identity formation and whether it creates any greater sense of yearning and mystery about unknown genetic parents. The issue of a donated egg or donated sperm that may have made up the embryo makes the storytelling of a child's roots even more complex.

Principles and Practices #5

There is no right to adopt, only the right of the child to be adopted. The purpose of adoption is to provide the best possible parents for children, not to provide children for adults who desire to parent them. Adoption policy and practice guided by the best interests of the child recognizes no "right to adopt," only the right of the child to be adopted when his or her biological parents cannot or will not parent.

Principles and Practices #6

Children's interests, not ideologies, should come first. Various ideologies at times prevent adoptions in children's best interests. Family preservation is demanded sometimes even when there is no safe and stable family to pre-

serve. Transracial adoptions are blocked to hold out for a same-race placement that never comes. Nationalists stop intercountry adoption to preserve national pride and internationalists block it because of perceived American imperialism.

Numerous ideologies and agendas also swirl about the world of reproductive medicine – pro-life and pro-choice; cloning and stem cell research; science, technology, and morality; gay and lesbian parenting. Do ideologies interfere with doing the right thing about frozen embryos? Is it possible to carve out a moral reproductive technology when the brave new world inexorably drives us toward doing whatever is possible without adequate moral consideration or restrictions?

Principles and Practices #7

Preference in adoption placements should be given to families that offer married mother-and-father parenting, but single-parent adoption can be in the best interests of some children. Married-couple parenting is the tried-and-true model. It provides children greater security and permanence and produces good outcomes for children. Children benefit from receiving both maternal and paternal love and from having both male and female role models in their immediate family. Most adoption agencies prefer to place with married couples whenever possible. This is especially true when placing infants because there are always many more married couples interested in adopting babies than there are babies to be adopted. Many service providers also place with singles, especially when it is clear that single-parent adoption is the best option available for a child. This is sometimes the case for children in foster care, where the average age of children waiting to be adopted is nine.

Should embryo placements prefer married couples as well? Or should placements with single women be encouraged since there are far more embryos, it seems, than would ever be placed with married couples? Should the law address this question or should it be up to placement service providers to decide? Should embryo placement recipients receive as close scrutiny and screening as prospective adoptive parents do? If not, why not? And who will provide this scrutiny?

Principles and Practices #8

Mutual consent should decide issues of adoption privacy and openness. The views among parties to adoption regarding openness and privacy could not be more diverse and personal. Some birthmothers welcome contact. Others choose confidential adoption, for a variety of sensitive personal reasons – perhaps the pregnancy was the result of

rape, incest, or abuse; perhaps she is in an abusive relationship and disclosure of this secret would endanger her; perhaps she never told her husband and family; perhaps she fears her young children will feel insecure knowing of the prior relinquishment; perhaps she is not emotionally ready to handle a reunion. Given these personal sensitivities, NCFA argues that adoption policy and practice should not empower one side to force themselves on the other. The release of identifying information and contacts should be based on mutual consent, not be coerced unilaterally.

Do genetic parents of people who are born into their families through embryo placement have a similar right to control the release of their identifying information? According to property law, they would at the time of placement, but the embryo that was treated as property becomes a person with rights. Does that person have a right to know his genetic origins? If so, is that right absolute, or should there be exceptions? Genetic parents' arguments for maintaining privacy would not seem to be as sympathetic as that of birthparents', but what if they would only agree to the placement if they can do so confidentially? How should the law resolve this issue?

On another openness issue, adoption experience teaches that keeping adoption secret from adopted children is unnecessary, deceptive, and traumatic when discovered later in life. Research shows that openness and sensitivity in communication about adoption within families is positively correlated with healthy identity formation for adopted children. Should parents of children born through embryo placement be similarly open about how their children joined their families? Will embryo placement service providers reliably ensure that parents are properly counseled to conduct this communication?

Conclusion

As I predicted, I have given embryo placement advocates and practitioners far more questions than answers. But I hope I have offered food for thought. I admire and applaud you for your courage and integrity in seeking to address this vexing moral quandary. I hope you will consider my recommendation, which I repeat for you now in concluding. Because of the legal and moral controversy associated with the personhood of the embryo, I recommend you find a neutral name for your practice and suggest as an alternative: embryo placement for pregnancy and parenting, or embryo placement for short. I end my presentation with a final first principle. As you advocate for and practice embryo placement for pregnancy and parenting, please be sure to do no harm to the precious institution of adoption.

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