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# Death Scenes

David A. Ellison and  
Katrina Schlunke

Special Issue Editors

AGAINST the DAY • Politics and the Political

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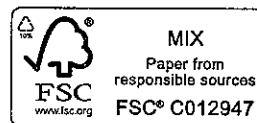
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David A. Ellison and Isabel Karpin

Death without Life: Grievability and IVF

**M**arking the death of a loved one through the body takes countless forms: the muting of wardrobe, the softening and sporadic breaking of voice, and a focused effort to recall, recount, and even perform the mannerisms of the dead are just a few possibilities. There are also unanticipated reactions: the graying of hair, insomnia, dramatic changes in weight and libido. The grieving body is a surpassingly expressive canvas of loss. Cumulatively, these signs of grief may align with, or stand in uncomfortable contrast to, the various Western rituals that otherwise structure the ending of life and the beginning of death: viewing the body lying in state; composing eulogies, epitaphs, and obituaries; organizing funerals and internments, wakes and memorial services; reading wills; distributing goods; and so on. These forms and practices of grief and mourning give shape and duration to the problem of how to dispose properly of the dead and how the physical and emotional transformations wrought by bereavement find expression and management. However, the apparently self-evident states of life and death and their difference from each other change over time, and this in turn complicates the personal and social acknowledgment of mortality.

With the emergence of new technologies of organ transplantation, for example, the definition of death has shifted from the cessation of the beating heart to the electrical silence of the brain, thus inaugurating the uneasy spectacle of the warm and respirationed corpse awaiting further surgical excavation. With the advent of immortal stem cell lines, the development of artificial gametes from skin cells, cloning, and the posthumous reproduction of embryos, the constitution of death as an event local to a particular failed body is fundamentally problematized.<sup>1</sup> As medical technology produces newly marginal or partial forms of life, the older sureties of grief as an emotion rooted to the terminal circumstances of recognizable bodies seem manifestly less certain.

Of course grief is not demanded for all human deaths. It is, in fact, one of the ways in which we register the value of some lives over others.<sup>2</sup> But, recently, it is also the case that grief, or something like it, may arise where death is not at all clearly present. The situation that concerns us in this essay involves just such a circumstance: a processual ending that sits very uneasily, even undecidably, on the boundaries of life and death. Specifically, we explore a desire on the part of recipients of in vitro fertilization (IVF), their partners, clinicians, and regulators to find a way to mark their decision to dispose of unused embryos with some kind of appropriate affect—to give shape and meaning to the act of disposal.

In this essay we explore the disposal of cryopreserved embryos stored during IVF treatment by way of a practice known as “compassionate transfer.”<sup>3</sup> Surplus cryopreserved embryos are those held in storage after completion of IVF treatment. IVF recipients are usually given a limited period within which to decide about those stored embryos.<sup>4</sup> In some jurisdictions, it is possible to continue storage indefinitely, as long as the storage fees are paid. However, in most countries where IVF is available, embryo storage is term limited, and disposition decisions eventually must be made. These rules place pressure on IVF users to make decisions that they would otherwise avoid. Studies of IVF recipients’ attitudes toward their cryopreserved embryos suggest that women and couples find it extremely difficult to make such disposition determinations.<sup>5</sup> As a result, they may undertake unwanted additional treatment cycles rather than dispose of those embryos or continue storage longer than necessary because they cannot face the alternative.<sup>6</sup> Before considering the complex ethical, legal, and cultural aspects of this process it is important to consider what may be done with embryos left over from the treatment cycle.

Broadly, there are three main disposition options: research, donation,



and disposal. Studies among IVF users suggest that donation for research and disposal are the two most common disposition decisions.<sup>7</sup> In the first option, a couple or woman may decide to donate the embryo for medical research. Embryos donated for medical research may be used for any number of purposes but most commonly are directed to infertility or stem cell research. Given the potential controversy of the latter, some donors insist that their embryos be used only for infertility research purposes.<sup>8</sup>

The second disposition option is to donate the embryos to a woman or couple for reproductive use. While many women indicate a willingness to offer their embryos for donation at the beginning of IVF treatment, these views often change by the end of the process.<sup>9</sup>

The third disposition option involves thawing frozen embryos followed by their disposal. This option may take a number of forms. Sometimes, a request is made for a disposal ceremony held inside or outside the clinic that may resemble memorial or funerary rites based on traditional interment.<sup>10</sup> A further option, compassionate transfer—the disposal method that occupies us here—involves thawing the embryo in a petri dish, collecting it in a pipette, and then placing it in the woman's vagina or cervix, where, it is understood by all parties, it cannot develop. Alternatively, the thawed embryo may be placed in a woman's uterus at a time when implantation is unlikely. Fertility-enhancing hormones are not administered, further reducing the likelihood of successful implantation. Another option involves the extension of cryopreservation, if permitted, until the onset of menopause, at which time a woman may elect to have the embryos transferred to her body.<sup>11</sup> The object here is to discontinue storage and discard the embryos in a way that enrolls the woman's body in a ritualized practice that confers additional (ethical, ceremonial) meaning to the act of disposal.

Although we have been unable to locate the precise institutional origins of this practice, it is likely to have emerged in response to two related objectives: managing restrictive legal requirements and maximizing embryo implantation success rates. In Italy, for example, legislative restrictions had required implantation of all fertilized eggs developed in a cycle. Under these laws, in 2004, a twenty-six-year-old woman was forced to have three embryos transferred to her uterus, despite facing extreme health risks if she became pregnant with triplets.<sup>12</sup> Although the law was seen as a victory for the Catholic Church, in Italy abortion is still legal up to ninety days and longer if a health risk can be demonstrated. The young woman who subsequently became pregnant with triplets was thus able to have a fetal reduction.<sup>13</sup>

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Clinics in countries such as Ireland and Switzerland are subject to similarly restrictive laws regarding embryo transfer and have developed creative ways to deal with these constraints. In Ireland, for example, guidelines set down in the 1990s by the Institute of Obstetricians and Gynaecologists and the Irish Medical Council prohibited the storage of embryos for later use or research. Under a system of self-regulation, Irish clinicians required "all embryos be replaced in the woman."<sup>14</sup> Deirdre Egan notes, "This last condition led to the rather bizarre situation where doctors, in order to minimise the risk of multiple pregnancies, replaced surplus embryos in the woman's cervix where they could not survive. This, as wryly pointed out by one critic, was equivalent in effect to putting them in her ear."<sup>15</sup> Unlike clinics in Italy, Irish clinics seem to have been far more determined to find ways around the guidelines and spare their clients the risk of a triplet pregnancy. One clinic abided by the guidelines by freezing only what it insisted were precursor embryos or zygotes (where the sperm had penetrated the egg but the two nuclei had not yet combined).<sup>16</sup> In response to a complaint made to the Irish Medical Council by antiabortion groups, this clinic was defended by the master of the Rotunda Hospital in Dublin, who told the *Irish Times*: "We can't drag the woman in and tie her down and replace [the embryo]. We will do all we humanly can to replace them. We believe they belong in the mother."<sup>17</sup> While the *Irish Times* article characterized the practice of placing the embryo in the woman's cervix as bluntly strategic, a different view of this process has been offered up in the Swiss context.

In Switzerland, where cryopreservation has been prohibited since 2001 except for research purposes (since 2005), IVF clinicians are similarly required to transfer all embryos created outside the female body, if possible.<sup>18</sup> In Swiss clinical practice three fertilized eggs are developed (the maximum permitted) with an eye to transferring the best two. In compliance with the letter, if not the spirit, of the law, the third embryo is placed into the vagina, where it develops no further.<sup>19</sup> Although the Swiss example shows how a particular practice can arise out of the demands of the legislature, there is evidence to suggest that this procedure was understood by IVF recipients as ethical in ways distinct from and in excess of the clinic's strategic accommodation of the legislative intent to protect "life." In a study of Swiss clinics and their patients, one IVF recipient described how she was told that her surplus embryos "would simply [be] put . . . back in the vagina so they come to an ethical end, somewhere."<sup>20</sup> This was a matter-of-fact proposition for the woman, who also indicated that there was "no ceremony" attached to this disposal. Bruno Imthurn of the Division of Repro-

ductive Endocrinology at the University Hospital Zurich also describes this kind of transfer in ethical terms: "From the legal and biological point of view, it is the same to discard embryos or to *replace* them in the vagina. In both situations, they are destroyed. However, for many patients (and also for me) it is a difference from their (and my) ethical point of view, whether to put the embryos in a garbage bin or *returning* them to the body of the corresponding patient."<sup>21</sup>

Let us examine the choice of the words *replace* and *return*, in both the Swiss and Irish contexts. The return or replacement contemplated here must be entirely imaginary. The embryo, in fact, is created outside the body, drawing on materials extracted from both gamete providers, and has its origins in vitro and not in the female body. To call this a return or a replacement is to suggest falsely that the test tube and the female body are interchangeable at the point of fertilization. Perhaps the aim is to rhetorically undo the act of clinical fertilization altogether. The idea of return or replacement positions the woman in a moment that is prior to the advent of clinical intervention, a moment characterized by the experience of reproductive failure.<sup>22</sup> We see here an ethical response on Imthurn's part, which, although not explicitly demanded, seems reactive to legal prohibition—perhaps it compensates for the clinic's apparent creative reading of the legislative requirement. If the embryo, recast as an egg, is "returned" to the female body for disposal, rather than to the "garbage bin" as medical waste, we can see how this ritual process might draw on menstruation to provide an ethical frame for that disposal. It does so by returning the embryo to a state of something that typically requires a different ethical and affective response. This is a means to neutralize or undo the act of embryo disposal that has been technologically imposed and legally required and to ward off the need for ceremony. We will return to this below.

In jurisdictions such as the United States, where there is, as yet, no legal requirement to transfer all embryos, the need to maximize implantation success rates resulting in the development of surplus embryos allows us to identify a third objective, namely, to provide an affective frame for the disposal of unused embryos. The term *compassionate transfer* was probably first coined in the United States by Resolve: The National Infertility Association, which lists the procedure on its Web site among the available options for IVF patients with frozen embryos awaiting disposition decisions.<sup>23</sup> Although the procedure is framed in terms of compassion, it is unclear who extends compassion to whom or what.

### Grievable Not-Life

What does it mean to interpolate the female body into the process of discarding embryos? Why is it that for some women (and, for different reasons, some clinicians) placing the embryo in their body for the purposes of disposal constitutes a meaningful and emotionally expressive way to manage that decision? We have argued elsewhere that what was lost in embryo disposition was not life but rather desire—the desire to test the embryo's potential and to disturb its equipoise of cryopreservation, where everything is kept in a time lock, in a state of suspended animation, or in the case of surplus cryopreserved embryos, what might be described as a state of “suspended extinction.”<sup>24</sup> It also speaks to the loss of the desire to continue an ongoing relationship with the clinic and all it represents.

In this essay, however, we focus on the question of what is grieved over or mourned. The question is not trivial, as much of the labor expended in IVF is directed at securing the fluid boundaries of something—a fertilized egg, an embryo, a potential life, tissue, medical waste—that is unstable to the point of undecidability. Judith Butler argues in *Frames of War* that “only under conditions in which loss would matter does the value of life appear.”<sup>25</sup> She continues, “Thus grievability is a presupposition for the life that matters.”<sup>26</sup> However, in the case of the surplus embryo—deliberately lost or given up—the opportunity, indeed the necessity, for some kind of ritual or ceremonial accounting, as in the case of compassionate transfer in and through the woman's body, suggests the very opposite. This is a claim to grievability for not-life, for something that in the end is immaterial.

If we can reverse Butler's conceptualization of grievable life in this way, then it is worth considering Giorgio Agamben's concept of “bare life.”<sup>27</sup> Bare life is that state of existence occupied by those who are excluded from political life—the stateless refugee, the concentration camp internee, and the like. As Penelope Deutscher notes these examples “are usually formations that one can imagine having been identified as human life and then stripped of that status.”<sup>28</sup> However, as Deutscher further points out, “a consideration of fetal life does not fit the series, as it is usually not situated at the threshold of depoliticization or dehumanization of previously politicized or humanized life.”<sup>29</sup> What then of the claim that fetuses (and presumably embryos) ought to be included in the threshold life of Agamben's conceptualization of bare life? Deutscher argues: “This is not a life whose humanity has been stripped or lost. If it has any temporality at all, it would be the temporality of the prior, not the post.”<sup>30</sup> Taking this a step

further, one might describe the lost embryo in terms of "not-yet-life," which nonetheless warrants some ceremonialized recognition of grief. In its prior status it exists only as the curtailment of potential, not the curtailment of actual life. This is what Helen Keane, drawing on the work of Lynn Morgan and writing in the context of miscarriage and abortion, describes as "a decision not to complete the social process of producing a body/person."<sup>31</sup> Butler, too, rejects the notion that grievability can operate in absence of the social conditions that produce life. Addressing directly the question of fetal life she writes: "There is no life without the conditions of life that variably sustain life, and those conditions are pervasively social, establishing not the discrete ontology of the person, but rather the interdependency of persons, involving reproducible and sustaining social relations, and relations to the environment and to non-human forms of life, broadly considered."<sup>32</sup> Nevertheless women who actively choose to dispose of their embryos do grieve or feel something about the act of giving up. Further, this expression of feeling is often muted because its audible expression might cede ground to those who would wish to stop these acts of disposition.

Sharon Kaufman and Lynn Morgan have described life endings as dependent "on the culturally acknowledged transformation of a living person to something else—a corpse, non-person, spirit, ancestor, etc. Both are frequently characterized by a time of provisionality, indeterminacy and contestation as social relations are reordered."<sup>33</sup> Here in the clinic the desire to interpolate the female body into the cessation of embryonic life is, one might suggest, an attempt at some kind of recognition (and the stability such recognition might bestow) of that which is otherwise insubstantial and indeterminate. However, it is important to distinguish this kind of recognition and its emotional effects from the kind of grief summoned in the face of annihilation or, for lack of a better term, *conventional mortality*.

Indeed, feminist critical investigations into the biomedicalization of reproduction over the last several decades have struggled to find a secure way to attend to reproductive loss and gestational grief (see, for example, Catherine Kevin's essay, in this issue<sup>34</sup>), and so it has been given only tentative recognition. Morgan has argued for many years for a "pragmatic situational ethics of fetal relationality" and more recently has applied this to her consideration of disposition practices around embryos.<sup>35</sup> She argues in this context, "Today, as in the past, the meanings attached to embryonic and fetal remains are socially and politically constructed by negotiations among women, scientists, clinicians, the state, entrepreneurs, religiously motivated groups, and so on. Now, as in the past, the tangled relationships

among these constituencies define the zone within which jurisdictional disputes are fought.”<sup>36</sup> Morgan, like the feminist theorists she draws on—Linda Layne, Rayna Rapp, Barbara Katz Rothman, Susan Sherwin, and so on—is attempting to develop a framework within which the experiences of women and their feelings about, and understandings of, their embryos and fetuses are appropriately recognized as negotiated identities within particular political and social contexts. Wary of the potential for political deployment of the fetus/embryo as what Kaufman and Morgan call an “iconographic biopolitical tool,”<sup>37</sup> we take up the challenge of trying to identify what is at stake in the attribution of some kind of grief to the disposition of surplus embryos.

We suggest that these feminist accounts allow us to think about how much meaning can be afforded and expended on fertilized cells. While amenable to being understood in terms of life and death these entities do not fully partake of these states. Faced with a sense of loss *akin* to grief in the context of embryo disposition, for example, IVF recipients come up against the competing public narrative of abortion politics. Two of the difficulties facing women who wish to express some sense of loss are the problem of warding off antiabortion advocacy in which grief might be coopted and finding a language adequate to the task of measuring the loss of something that does not yield a death.

The process of compassionate transfer is, we would suggest, one way clinics and IVF recipients have attempted to manage this dynamic. The language of transfer rather than disposition suggests that the embryo is shifted from the care of the clinic to the care of the woman’s body rather than simply being disposed of. Death is not actively present in this process, and the capacity to ward off antiabortion politics relies on this undecidability of the embryo. Its partial status makes it of interest culturally and legally as a rhetorical resource for thinking outside the emphatic categories of life and death.

### Embryonic Undecidability

There are a number of ways in which the embryo’s undecidability registers. In the context of IVF, cryopreservation is a hedge against failure, the result of a system that relies on oversupply to compensate for lower success rates. These embryos in the bank are poised on the edge of oblivion. Undecidability is a feature of the clinical environment, but it also characterizes the experience of the IVF recipient, whose relation to her embryos vacillates

between presence and absence, emphatic life, or something more attenuated, more virtual, or not life at all.<sup>38</sup> Frozen embryos might be considered life, or temporally suspended future children who are not now alive, or as a crossing point for a set of relationships rather than a discrete entity. These and related positions shift circumstantially over the course of treatment, storage, and disposition determinations. As we have noted, some viewpoints, principally those of antiabortion groups, do not recognize any of the slippages documented here. From such perspectives, life is life and it has its origins at or near conception.

While it is clearly the case that the gamete providers have a stake in making a disposition decision, they are not alone. The clinic is also interested in the embryo as artifact—it is by any reckoning a collaborative construction. Therefore, the idea that the embryo should, self-evidently, be returned to the female body is somewhat complicated. From a broad clinical perspective (noting of course that no single clinical perspective prevails), there is an unacknowledged undecidability revealed in the contradictions, reversals, and inconsistent practices relating to the handling of fertilized cells. In the routine grading of embryos, for example, many are simply discarded as medical waste. These decisions are made on the basis that the embryos are “rough” or “ugly” or that they exhibit features interpreted to mean reduced prospects of successful cryopreservation or transfer; this process is unceremonious. In her study of clinics in Ecuador, Elizabeth Roberts describes how “neither practitioners nor patients considered poor-quality embryos to be worthy of mention, or cryopreservation.”<sup>39</sup> These *feo* (ugly) embryos did not warrant the title “extra” that would be assigned to those embryos that give rise to the choice between cryopreservation or disposal.<sup>40</sup> Indeed, she refers to the physicians and biologists at one clinic who “laughed when they heard of . . . efforts to save *feo* embryos, saying ‘what a waste of time and money.’”<sup>41</sup>

This is borne out in other jurisdictions too. In Mette Svendsen and Lene Koch’s Danish study, clinicians framed their decisions in terms of aesthetic judgments: “As laboratory technicians and clinicians classified the cultured embryos, some were described as ‘good-looking’ or even ‘beautiful’ and considered well suited for implantation. Others were described as ‘looking ugly in the microscope’ or simply as ‘not good-looking,’ which meant that they might have a chromosome disorder or a similarly serious condition.”<sup>42</sup>

In the United States, as well, there is evidence of related sorting practices distinguishing embryos from medical waste. Robert Shabanowitz,

an embryologist, describes his "angst" in response to discarding cryopreserved embryos while merely noting in passing the inevitable disposal of those that are, in his view, nonviable: "Disposing of human embryos is one of the more difficult responsibilities assigned to an embryologist in a fertility clinic. Disposal is not performed without a certain amount of angst; embryologists, after all, are primarily charged with the culture and transfer of embryos, not their destruction. *Although we routinely discard embryos that are considered nonviable or fail to develop in culture*, disposing of cryopreserved embryos represents those embryos that are considered to have the greatest potential for implantation."<sup>43</sup> A measure of decidability is achieved in these instances, although arguably it is highly subjective and there are competing clinical views on the accuracy and effectiveness of these sorting processes.<sup>44</sup> Consider the related practice of preimplantation genetic diagnosis.<sup>45</sup> Embryos found to contain a genetic defect or chromosomal abnormality in this instance are also typically disposed of without ceremony. From a disability rights perspective, this sorting pares the possibility of nonnormative life from the category of life itself.<sup>46</sup>

In the clinic, initial grading distinctions (good, bad, ugly, beautiful, healthy, disabled) may be made swiftly and unreflectively, but later disposition choices, made with respect to potentially viable embryos, attract external pressure to treat the embryos in a manifestly different way. They give rise to claims for a kind of *clinical* compassion.

### Clinical Compassion

Clinical compassion might be divided usefully into two forms: that which is mandated and that which arises spontaneously within the lab. Mandated compassion emerges in the context of medical treatment. As human tissue, one would assume that embryo disposal would generally fall within given local guidelines on the disposal of clinical waste.<sup>47</sup> However, in Australia and the United Kingdom, for example, special guidelines regulate embryo disposal. In Australia, all IVF clinics are required to comply with guidelines issued by the National Health and Medical Research Council, which require a measure of "respect" in the handling of embryos. Clinics are directed to have "protocols in place for the respectful disposal of embryos." The guidelines also note that "one very widely shared view" is that "embryos warrant very serious moral consideration."<sup>48</sup>

A similar expectation exists in the United Kingdom, where the Human Fertilisation and Embryology Authority requires that IVF clinics



"take account of the special status of the human embryo when the development of an embryo is to be brought to an end. Terminating the development of embryos and disposing of the remaining material should be approached with appropriate sensitivity, having regard to the interests of the gamete providers and anyone for whose treatment the embryos were being kept."<sup>49</sup>

In the absence of a specific definition, the burden of defining "respect" falls on the clinic. As we have argued elsewhere, what is stipulated is, in fact, "an ethical *attitude* towards the embryo tied to the enacted expression of some appropriate affect or, at a minimum—one might imagine—the suppression of other, inappropriate forms of affect on the part of the clinician. This draws the clinician into a nascent death scene governed by the expectation that they will maintain a proper level of moral seriousness when handling the embryo."<sup>50</sup>

While some of these feelings are mandated, others emerge spontaneously within the lab. Roberts, writing on IVF practices in Ecuador, describes an encounter with a clinician named Antonia who kept a dish filled with unfertilized eggs and unused, extra embryos in the back of the incubator next to her desk. Roberts notes, "She kept one of these dishes for about a year, depositing the extra embryos from every patient's cycle into a dish in which they reside together until it was time to sterilize the lab. It was in this dish, after they lost the potential to become children, that patients' gametes were allowed to mingle. Antonia used them as display embryos for visitors, instead of removing the patients' embryos, slated for transfer, from the optimal conditions of the incubator."<sup>51</sup>

Michael Meyer and Lawrence Nelson grapple with both the external requirement of respect regarding embryo disposal and the kind of appropriate affect that they argue should emerge from the clinicians themselves. Writing in the context of human embryo research and the apparent paradoxical requirement that clinicians must respect what they destroy, they suggest that the occasion of the destruction of "extra-corporeal embryos" "provides a reason for [the clinician] to have and demonstrate some sense of regret or loss."<sup>52</sup> Further, they note, "such respect in the lab should never be an empty or insincere gesture . . . and [clinicians must dispose] of the remains of used embryos in a way respectful of their status (for example the remains might be treated as if they were corpses and be buried or cremated)."<sup>53</sup>

In drawing this analogy between the treatment of embryo disposition and burial or cremation of the corpse, Meyer and Nelson raise concerns

for those of us who would not want to equate embryonic entities with fully fledged human lives. However, it may be that by drawing this analogy, we are offered access to the resources of mourning and grief that may now be used in the context of a loss that is not quite death but is, nevertheless, an ending. This ritual of compassionate transfer emerges in the interstices among mandated feeling rules, spontaneous emotional responses on the part of clinicians, and coercive legislative regimes. It is enlisted by IVF users who are negotiating (or holding at bay) right-to-life discourses and the subtler and more complex claims that the embryo may make on them for recognition. To that end, in what follows, we consider related forms of grief that similarly enroll the body in expressive proximity to the lost object.

### **Embodied Compassion**

One of the obvious differences between an embryo and a corpse, aside from scale, is that the handling of the latter is governed by stringent public health regulations about unsanitary contact between the living and the dead. Compassionate transfer is, therefore, unique in that bodily contact is central to the process. However, the ceremony/ritual of placing the embryo in the body for disposition purposes does resonate with earlier activities that brought the dead into intimate contact with living bodies.

Anglo-American traditions of nineteenth-century mourning photography, for example, capture the dead resting tenderly on the laps of the living, sitting propped up among surviving family, or appearing to sleep through group portrait sittings. Even greater intimacy is contemplated in Victorian mourning jewelry, composed of the twined and elaborately curled hair of the deceased and worn in a locket next to the skin.

Elizabeth Bronfen argues that in the nineteenth century death became a private event "assuring the continuity in the form of a family unity."<sup>54</sup> She continues: "The literary theme of blissful reunion of domestic life in heaven, supported by consolatory literature, grave inscriptions, monuments and the keeping of mementos of the dead, implies that death was no longer ugly or frightening, because the separation it caused was temporary. Finality could be denied because continuity was excessively staged."<sup>55</sup> In the case of the embryo, however, there are no bodily mementos. Continuity is hard to stage because embryonic life is phantasmal and resides in the realm of the imaginary. Nevertheless, women who speak of using compassionate transfer often do so precisely to "assure continuity in the form of a family unity" while at the same time recognizing the ephemer-

eral nature of those relations. For "Bee," who writes a blog documenting her experiences with assisted reproduction, the connection between her existing children (created through IVF) and those cryopreserved embryos she must now discard, is palpable. Yet she finds comfort in the idea that her body may have discarded these embryos anyway and that their momentary residence inside her constitutes a fleeting form of care. She writes:

My obstetrician, who is also a friend, put this in context for me: "More often than women will ever know, fertilized eggs 'roll on through' and do not implant. It's the way nature works." In fact, that is exactly what happened to the embryos we transferred *with* Madelyn's and Lily's embryos, that did not grow into children. By choosing compassionate transfer, I will be putting our remaining embryos back where they would have been if naturally conceived, but not implanted.

And the mother in me, as I think about the children who are not but might have been, simply wants to hold them for that brief time. And say goodbye.<sup>56</sup>

As noted earlier, the language of transfer rather than disposition suggests that the embryo is shifted from the care of the clinic to the care of the woman's body. The use of the body to effect this continuity suggests that even as embryo disposal is a form of ending, even a means to achieve closure, it is not a death but a "natural" cessation of future possibility.

The ethnographic record also provides an important precursor analogy for this use of compassionate transfer. At least until the late 1950s, the Amazonian Wari' peoples practiced endocannibalism as a means to negotiate the persistent relationship between the living and the dead. Beth Conklin, whose field work details this practice in all of its complexity, uses the term "compassionate cannibalism" to describe how the Wari' were quite clear about the motivation for eating a corpse. By incorporating the body among extended family members, the Wari' managed the physical reminder for those whose powerful feelings of loss might otherwise prolong the period of intense grief.<sup>57</sup> Incorporating the body of the dead extends compassion to the aggrieved and also to the dead, who, if not consumed by the living, would otherwise face the terrible prospect of burial in the cold and isolate earth. For the Wari' compassion is extensive, reaching both outward and inward, drawing lines of connection and affect through and among members of social and kinship groups, pulling them together through embodied contact with the dead.

There are also contemporary instances of bodily incorporation of the dead. Kim Mordue, whose twenty-year-old son died from an overdose of

party drugs, for instance, arranged to have his ashes tattooed into her skin. In language that echoes Bee's, Mordue said, "I've put Lloyd back where he started—he's in my body again."<sup>58</sup>

Grieving parents tattooing themselves with ink mixed with ashes of their dead children is a vernacular version of the embodied gesture enacted in compassionate transfer, or rather, both are vernacular versions of the same commemorative impulse. Compassionate transfer is a ceremony that, as noted above, has emerged in the gaps between militant right-to-life politics, regulatory practices, and institutional and private ethics. It is also a piece of theater, something exceptional in the clinical context that is otherwise defined and governed by the instrumental, the rational, and the purposive. In compassionate transfer, the IVF clinicians mime routine embryo transfers, playacting a scene that is both a simulation and sincere. The recipient too knowingly enters into this form of clinical theater as rite, in which another kind of acknowledgment is conveyed, that this is an end. There is something provisional, even improvised about this combination of science and ethics, grief and compassion.

We return to the question, then, of who extends compassion to whom in compassionate transfer. We suggest that compassion is circulated among all parties in the process of trying to find something adequate to the expression of cessation. Our aim here is not to offer some kind of allegory of political subjectivity for the cryopreserved embryo that would focus on the ways in which its liminality disturbs the liberal subject—like Agamben's bare life (the refugee or internee who is denied the status of a life afforded human rights) or Butler's ungrievable life (the populace stripped of humanity and cast out of grief into indifference)—but rather to understand the practices of women engaged in IVF, the clinicians who assist them, and the desire of both to find a way to acknowledge the partial, relational, and collaborative process of *not making life*.

#### Notes

- 1 Christine Mummery, "Stem Cell Research: Immortality or a Healthy Old Age?" *European Journal of Endocrinology* 151 (November 2004): U7–U12; Ainsley Newson and Anna Smajdor, "Artificial Gametes: New Paths to Parenthood?" *Journal of Medical Ethics* 31.1 (2005): 184–86; and G. Bahadur, "Ethical Challenges in Reproductive Medicine: Post-humous Reproduction," *International Congress Series* 1266 (April 2004): 295–302.
- 2 Judith Butler, *Frames of War: When Is Life Grievable?* (London: Verso, 2009).
- 3 This essay steps off from an earlier work in which we examined the legal and cultural conditions under which compassionate transfer emerged: David Ellison and Isabel Karpin, "Embryo Disposition and the New Death Scene," *Cultural Studies Review* 17.1

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- (2011): 45–64. Here we focus on the broader frame of grievability and nontraditional responses to grief, in particular those that engage the living body in that process.
- 4 See, for example, in Australia, National Health and Medical Research Council (NHMRC), *Ethical Guidelines on the Use of Assisted Reproductive Technology in Clinical Practice and Research* (Canberra: NHMRC, 2007), para. 8.8.
  - 5 See, for example, Sheryl De Lacey, "Decisions for the Fate of Frozen Embryos: Fresh Insights into Patients' Thinking and Their Rationales for Donating or Discarding Embryos," *Human Reproduction* 22.6 (2007): 1751–58; and Anne Lyerly, S. Nakagawa, and Miriam Kuppermann, "Decisional Conflict and the Disposition of Frozen Embryos: Implications for Informed Consent," *Human Reproduction* 26.3 (2011): 646–54.
  - 6 For those who want to extend storage, see, for example, Sheryl De Lacey, "Parent Identity and 'Virtual' Children: Why Patients Discard Rather Than Donate Unused Embryos," *Human Reproduction* 20.6 (2005): 1661–69; and Anne Drapkin Lyerly et al., "Factors That Affect Infertility Patients' Decisions about Disposition of Frozen Embryos," *Fertility and Sterility* 85.6 (2006): 1623–30.
  - 7 De Lacey, "Parent Identity and 'Virtual' Children"; and Anne Drapkin Lyerly, "Fertility Patients' Views about Frozen Embryo Disposition: Results of a Multi-Institutional U.S. Survey," *Fertility and Sterility* 93.2 (2010): 299–409.
  - 8 Catherine McMahon et al., "Embryo Donation for Medical Research: Attitudes and Concerns of Potential Donors," *Human Reproduction* 18.4 (2003): 871–77.
  - 9 De Lacey, "Parent Identity and 'Virtual' Children."
  - 10 Fenella Souter, "Maybe Baby," *Sydney Morning Herald*, June 13, 2009.
  - 11 Alison Lobron, "The Maybe-Baby Dilemma," *Boston Globe Sunday Magazine*, November 22, 2009, [www.boston.com/bostonglobe/magazine/articles/2009/11/22/the\\_maybe\\_baby\\_dilemma/?page=full](http://www.boston.com/bostonglobe/magazine/articles/2009/11/22/the_maybe_baby_dilemma/?page=full).
  - 12 Sophie Arie, "Woman Forced to Have Three Embryos Implanted Is Allowed Fetal Reduction to Save Her Life," *British Medical Journal* 329 (2004): 71. The law in question (Law 40/2004) concerns assisted reproduction technology.
  - 13 Ibid.
  - 14 Deirdre Egan, "Myths and Mothers: Women and IVF in Ireland" (paper presented at the Reproductive Disruptions: Childlessness, Adoption and Other Reproductive Complexities conference, at the University of Michigan, Ann Arbor, May 19, 2005), citing Susan Ryan-Sheridan, *Women and the New Reproductive Technologies in Ireland* (Cork: Cork University Press, 1994).
  - 15 Ibid.
  - 16 This accords with the 2007 Australian legislation, which defines an embryo as coming into being after the first mitotic cell division. See Prohibition of Human Cloning for Reproduction Act 2002 (Cth., no. 144), sect. 8; and Research Involving Human Embryos Act 2002 (Cth., no. 145), sect. 7.
  - 17 Carol Coulter, "Doctors Face Allegations over Freezing of Zygotes," *Irish Times*, May 30, 1998.
  - 18 Meichun Mohler-Kuo et al., "Attitudes of Couples towards the Destination of Surplus Embryos: Results among Couples with Cryopreserved Embryos in Switzerland," *Human Reproduction* 24.8 (2009): 1930–38. Note that before 2001 the cryopreservation of embryos for later use was routine, but the Swiss Medically Assisted Reproduction Act (Reproductive Medicine Act RMN; 810.11; 1998) also introduced a deadline for

- the destruction of those previously cryopreserved embryos by its 2001 amendment. In 2005 the Swiss government introduced legislation to allow for cryopreservation in limited circumstances for the purposes of research only. Stem Cell Research Ordinance (SCRO; 810.311).
- 19 Bruno Imthurn, director of the Division of Reproductive Endocrinology and the Department of Obstetrics and Gynaecology at the University Hospital Zurich, notes: "Today the culture and the scoring system have progressed. And it is now possible to score reliably on day 1 the 2PNS. So most centres in Switzerland develop only 2 2PNS to embryos. That means that intravaginal replacement has been abandoned by most Swiss centres." E-mail message to author, March 25, 2009; quoted with permission.
  - 20 Interview with "H.," in Jackie Leach Scully, Rouven Porz, and Christoph Rehmann-Sutter, "Heirs and Spares: On Making Up Embryos" (paper presented at the Healthy Embryo conference, University of Western Ontario, London, Ontario, November 14, 2007); see also Jackie Leach Scully, Christoph Rehmann-Sutter, and Rouven Porz, "Embryos in the Plural: Donors' and Non-Donors' Perspectives on Embryo Moral Status," in *The "Healthy" Embryo: Social, Biomedical, Legal and Philosophical Perspectives*, ed. Jeff Nisker et al. (Cambridge: Cambridge University Press, 2010), 16–31.
  - 21 Imthurn, e-mail, italics added.
  - 22 David Ellison and Isabel Karpin, "Embryo Disposition and the New Death Scene," *Cultural Studies Review* 17.1 (2011): 47.
  - 23 "After IVF: The Embryo Decision," Resolve: The National Infertility Association, [www.resolve.org/family-building-options/donor-options/after-ivf-the-embryo-decision.html](http://www.resolve.org/family-building-options/donor-options/after-ivf-the-embryo-decision.html) (accessed August 15, 2010).
  - 24 Ellison and Karpin, "Embryo Disposition and the New Death Scene." We have borrowed the idea of suspended extinction from Zygmunt Bauman, *Postmodernity and Its Discontents* (Cambridge: Polity, 1997), 19.
  - 25 Butler, *Frames of War*, 14.
  - 26 Ibid.
  - 27 Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen (Stanford, CA: Stanford University Press, 1998).
  - 28 Penelope Deutscher, "The Inversion of Exceptionality: Foucault, Agamben, and 'Reproductive Rights,'" *South Atlantic Quarterly* 107.1 (2008): 57–58.
  - 29 Ibid., 58.
  - 30 Ibid., 66.
  - 31 Helen Keane, "Foetal Personhood and Representations of the Absent Child in Pregnancy Loss Memorialisation," *Feminist Theory* 10.2 (2009): 156.
  - 32 Butler, *Frames of War*, 19.
  - 33 Sharon Kaufman and Lynn Morgan, "The Anthropology of the Beginnings and Ends of Life," *Annual Review of Anthropology* 34 (2005): 319.
  - 34 Catherine Kevin, "'I did not lose my baby . . . My baby just died': Historicizing Twenty-First-Century Discourses of Early Miscarriage," *South Atlantic Quarterly* 110.4 (2011): 849–65.
  - 35 Lynn Morgan, "Fetal Relationality in Feminist Philosophy: An Anthropological Critique," *Hypatia* 11.3 (1996): 63.
  - 36 Lynn Morgan, "'Properly Disposed Of': A History of Embryo Disposal and the Changing Claims on Fetal Remains," *Medical Anthropology* 21.3 (2002): 254.

- 37 Kaufman and Morgan, "The Anthropology of the Beginnings and Ends of Life," 329.
- 38 See De Lacey, "Parent Identity and 'Virtual' Children."
- 39 Elizabeth Roberts, "Extra Embryos: The Ethics of Cryopreservation in Ecuador and Elsewhere," *American Ethnologist* 34.1 (2007): 185.
- 40 Ibid.
- 41 Ibid., 189.
- 42 Mette Svendsen and Lene Koch, "Unpacking the 'Spare Embryo': Facilitating Stem Cell Research in a Moral Landscape," *Social Studies of Science* 38.1 (2008): 99.
- 43 Robert Shabanowitz, "The Disposer's Dilemma," *American Journal of Bioethics*, no. 5 (2005): 60, italics added.
- 44 Estair Van Wagner, Roxanne Mykitiuk, and Jeff Nisker note, for instance, that while some IVF clinics "still use microscopic criteria to determine which embryos are the 'healthiest looking,' and transfer the 'best' embryos while 'fresh,' in order to achieve the highest pregnancy rate . . . there is no evidence that an embryo's potential to become a child can be conclusively determined using morphological characteristics viewable through a microscope." Van Wagner, Mykitiuk, and Nisker, "The 'Affected' Post-Preimplantation Genetic Diagnosis Embryo," in *Brave New World of Health*, ed. Belinda Bennett, Terry Carney, and Isabel Karpin (Sydney: Federation Press, 2008), 37–54. Nevertheless, these kinds of qualitative decisions persist.
- 45 See NHMRC, *Ethical Guidelines*, ch. 12. See also Van Wagner, Mykitiuk, and Nisker, "The 'Affected' Post-Preimplantation Genetic Diagnosis Embryo."
- 46 Ellison and Karpin, "Embryo Disposition," 52.
- 47 In New South Wales, for instance, clinical waste is defined as including human tissue used in treatment, excluding hair, teeth, and nails. See NSW Department of Environment and Climate Change, *Waste Classification Guidelines*, part 1, *Classifying Waste* (Sydney: Department of Environment and Climate Change, 2008), 3, [www.environment.nsw.gov.au/resources/waste/o8202classifyingwaste.pdf](http://www.environment.nsw.gov.au/resources/waste/o8202classifyingwaste.pdf).
- 48 NHMRC, *Ethical Guidelines*, paras. 8.9 and 5.2.
- 49 Human Fertilisation and Embryology Authority, *Code of Practice*, 8th ed. (London: Human Fertilisation and Embryology Authority, 2009), sect. 15.13.
- 50 Ellison and Karpin, "Embryo Disposition," 93.
- 51 Roberts, "Extra Embryos," 189.
- 52 Michael Meyer and Lawrence Nelson, "Respecting What We Destroy: Reflections on Human Embryo Research," *Hastings Center Report* 31.1 (January–February 2001): 22.
- 53 Ibid., 22.
- 54 Elizabeth Bronfen, *Over Her Dead Body: Death, Femininity and the Aesthetic* (Manchester: Manchester University Press, 1992), 87.
- 55 Ibid.
- 56 Bee, "Left Over Embryos: What to Do?" *Hard Boiled: A Donor Egg Blog*, March 5, 2009, [www.donoreggblog.com/2009/03/left-over-embryos-what-to-do.html](http://www.donoreggblog.com/2009/03/left-over-embryos-what-to-do.html) (accessed October 16, 2009).
- 57 Beth Conklin, *Consuming Grief: Compassionate Cannibalism in an Amazonian Society* (Austin: University of Texas Press, 2001).
- 58 "Mother Has Dead Son's Ashes Tattooed into Her Skin 'So he will be with me for the rest of my life,'" *Daily Mail Online*, June 23, 2010, [www.dailymail.co.uk/news/article-1288578/Mum-Kim-Mordue-dead-sons-ashes-tattooed-skin.html](http://www.dailymail.co.uk/news/article-1288578/Mum-Kim-Mordue-dead-sons-ashes-tattooed-skin.html).

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