

AN OVERVIEW OF LEGAL DEVELOPMENTS REGARDING EMBRYO RESEARCH IN GREAT BRITAIN

A REPORT OF ONE OF OUR NEWCASTLE BRANCH MEETINGS

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Dr Jan Deckers works in the University of Newcastle Medical School teaching Bioethics. He gave us an overview of recent legislative changes relating to the status of the human embryo and embryo research in the UK. Before 1990 there was no specific legislation relating to embryo research. In that year the Human Fertilisation and Embryology Act was enacted and the Human Fertilisation and Embryology Authority was created shortly afterwards. Debate on these issues in Parliament had already begun in 1982 with the establishment of the Warnock Committee to examine the moral issues surrounding in vitro fertilisation (IVF). The role of this committee was to develop principles for the regulation of IVF and embryology. The committee reported in 1984 and concluded that the human embryo should be protected, but that research on embryos and IVF would be permissible, given “appropriate safeguards”.

In 2001, Human Fertilisation and Embryology Regulations extended the purposes for which embryo research could be licensed to include “increasing knowledge about the development of embryos”, “increasing knowledge about serious disease”, and “enabling any such knowledge to be applied in developing treatments for serious disease”. This allowed researchers to carry out embryonic stem cell research and therapeutic cloning provided that an HFEA Licence Committee considered the use of embryos necessary for such research.

The 2008 Human Fertilisation and Embryology Act amended the Act of 1990. Key provisions included in the 2008 Act were to:

- ensure that all human embryos outside the body – whatever the process used in their creation - are subject to regulation.
- ensure regulation of “human-admixed” embryos created from a combination of human and animal genetic material for research.

So what is the current status of the human embryo in the UK as a result of these changes in legislation and regulation? The answer is that the legal status of the human embryo is really very weak. The moral status of the human embryo, however, should also be considered. From

his study of all the Parliamentary debates, Dr Deckers divided the various arguments regarding the moral status of the embryo into four main categories:

1. Arguments from probability – based on the probability of natural embryo survival after conception
2. Arguments from sentience – based on the question of whether or not the human embryo can actually feel pain
3. Arguments from potentiality – based on the potential that human embryos have to continue developing through more mature stages of life
4. Arguments from ensoulment – based on the Aristotelian notion of the soul and the question as to whether or not an embryo can possess a soul if he or she is still capable of dividing into more than one single being

Each of these positions was examined in detail and the flaws in each of the arguments against granting moral status to the human embryo were highlighted. On the question of embryo survival, while it is recognized that many embryos conceived naturally do not survive to implantation in the womb and many die spontaneously shortly afterwards, we cannot predict which embryos will survive and develop and which will not survive. Any particular embryo may therefore have the same probability of surviving and developing from the outset. On the question of sentience, it is widely presumed that the embryo cannot feel pain as it does not appear to have a developed and integrated neurological biological system as we know it. Yet does this mean that the embryo cannot feel pain? There is evidence that the most simple of biological lifeforms, the amoeba, despite the absence of a developed neurological system seems to react to noxious stimuli. Furthermore, even if it were proven beyond doubt that the human embryo cannot feel pain, why should the ability to feel pain have any bearing on the moral status of any living being? What about those living persons who, for rare medical reasons, are unable to feel pain? Are they any less deserving of a moral status in our society? On the issue of potential, is an older person more deserving of moral status than a young child because the latter is less likely to have

achieved full physical, mental or other potential. With regard to the ensoulment question, Dr Deckers argued that the sheer possibility that an early embryo might divide does not preclude that he or she would be ensouled. Each of these arguments, if used to deny moral status to any human being, including human embryos, should be challenged.

On the question of allowing research using human embryos to proceed on the basis that it might eventually lead to some good, it should be stated that it is not normal to permit the destruction of human beings to achieve research benefits. Why should we therefore allow human embryos to be abused and destroyed in the “hope” that somehow this might eventually benefit other people?

In addition to these basic ethical questions, the perceived scientific advances in fertility management and embryology

with accompanying legislation and regulations have resulted in many ethical and moral dilemmas to which there are no simple solutions. The questions posed include: Should IVF clinics be allowed to create “spare embryos”? What should be done with human embryos already stored and “not required”? Should women who offer embryos receive discounted IVF treatment? Should the creation of human admixed embryos be allowed? If the human embryo was granted equivalent moral status to that of all other living human beings already born these questions

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