

Parental consent over embryos

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A British researcher and a barrister argue the need for clarification of the role of genetic parents in the determination of the use made of fertilized embryos in research and medical practice.

THE problems surrounding research on spare embryos are new to ethics, and strike at the root of life itself. On the one hand, such research could open undreamt-of vistas of improvement and amelioration for mankind; on the other, it raises fears that, by interfering with life's earliest beginnings, it may threaten the sanctity of human life in general. The kernel of the legal problem is this: when does an embryo become a human being, and therefore attract the protection given by the law to helpless members of society? The ethical problem may well be different, and might depend on the answer given by the law to the essential question.

At present there is no legal definition of the beginning of life. It is illegal to terminate a pregnancy¹ except under certain conditions related to the health and welfare of the mother², but there can be no abortion where there is no child. Recently, in the furore over the post-coital pill, the Attorney-General refused to prosecute those who prescribed the pill on the basis that there could be no pregnancy where the fertilized ovum had not imbedded: by analogy, the embryo produced *in vitro* is not a life which demands the protection of the law.

How does this affect the requirement for parental consent for research on such embryos? Those organizations which concern themselves with the ethics of human fertilization *in vitro* insist that such consent should be obtained before research is carried out on the embryos growing in culture. A limit is generally prescribed for the duration of embryo culture — for example, 14 days after fertilization — even by those who recognize the desirability of research. The question of whether or not parental consent is necessary cannot be decided by reference to the practice universally followed by physicians and institutions, because a different entity is under consideration.

Nevertheless, consent would seem to be desirable, even if not strictly necessary for research, whatever the legal status of the embryo may be. After all, the gametes come from the parents and must "belong" to them in some sense of the word. But consent is not a clear-cut issue, and before anybody sets out to obtain such consent, some important questions should be asked

about the motives for obtaining that consent. The first motive inevitably is to avoid legal complications. Where the parents give their consent freely, with clear knowledge of what the programme of research entails at least in general terms, they cannot thereafter complain, let alone take legal action against the researcher or the institution where it is carried out. Ethical considerations apart, this is an obviously sensible step to take.

But there is another important aspect of parental consent. The parents have a responsibility for their offspring, and it may well be argued that this responsibility extends to the early embryo. What the parents' rights and duties are has not yet been decided by the law, but on the assumption that the embryo "belongs" to its parents, as a sort of chattel, and is their sole property, they can dispose of their embryos as they wish.

Many people would insist that this assumption is wrong, and that embryos have rights of their own, even full human rights, immediately upon fertilization; for such people, parental consent would not overcome the affront to the embryo. If it is argued that the consent of the embryo is required, which of course it cannot give itself, then on the analogy of the young child giving consent to an operation, its parents could consent on its behalf. Neither an institution nor a professional organization, nor even a government, could give such consent, and any interested party could step in if such consent were given by the parents and make the child a "ward of court"; and the court would probably refuse to give consent on its behalf.

One thing is certain: no form of consent by the parents can exclude the rights of the child, when born, to sue the scientist or doctor for any damage suffered as a result of negligence in culture maintenance, research or freezing at the embryonic stage³. While a live birth following embryo research may seem unlikely at present, with the application of new techniques of sexing and identification of genetic defects, such a possibility must be faced.

The question of consent for embryo research is particularly important in cases of known genetic disorders in the patients, husband or wife, to avoid replacement of a genetically disabled embryo. The question becomes even more poignant in cases of embryo donation and surrogate motherhood.

If research on embryos is to be generally accepted and carried out, it can be done only on the basis of two assumptions. First, embryos *in vitro* do not have any rights until a stage of development well past the proposed studies; in this case, parental consent would be enough. Second, any request for consent from the parents inevitably places them in a predicament. In the case of a developed child, parents would in general be acting wrongly if they gave their consent to any procedure which was not to the direct advantage of the child, except in unusual circumstances such as kidney donation between identical twins. The situation concerning parental consent arises poignantly with fetuses as Teifel³ has pointed out: parents aborting their fetuses have condemned them already, and are the last people to be asked to give consent for research, for ethically it can be seen as a double wrong to the child.

If this argument about advantage applies to embryos, the only parental consent possible would be to replace the embryo in a recipient to confer its best chance of survival. But to most of us, there is a great ethical difference between a minute cleaving embryo and a fully-differentiated mid-term fetus, so that the analogy is not a helpful one. The legal clarification of embryonic rights, if any, is a first step to the solution of this dilemma.

The need for research is fundamental to the process of *in vitro* fertilization. Scientists and physicians have a duty to ensure that an embryo replaced in its mother for growth to full term is as normal and healthy as it can be. Their duty to a potentially live-born child must be overwhelmingly greater than to the cleaving embryo *in vitro*, and this duty must apply to attempts both to alleviate infertility and to avert inherited and other defects in the resulting children⁴. To undertake *in vitro* fertilization without guarding as far as possible against the birth of handicapped children is indefensible. The clinical application of *in vitro* fertilization in all its forms demands research on embryos, but this should be undertaken only in full awareness of the complexities of parental consent. It is to be hoped that there will be a clarification of the legal status of these early embryos *in vitro* before long. □

1. Offences Against the Person Act, 1861, s.58.

2. Abortion Act, 1967, s.2.

3. Teifel, H.O. *New Engl. J. Med.* 294, 85-90 (1976).

4. Edwards, R.G. *Pontifical Academy of Sciences (Vatican)* 51, 193-249 (1984).

5. Congenital Disabilities (Civil Liability) Act, 1976, s.1.

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