

# MEDICALLY-ASSISTED PROCREATION AND THE PROTECTION OF THE HUMAN EMBRYO

## THIRD SYMPOSIUM ON BIOETHICS

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### A Humanist Point of View

*"Thought must never be submitted to a dogma, a party, a passion, an interest, a preconception, or anything except actual facts, because if it were to submit it would cease to exist".*

Henri POINCARÉ

Most humanist associations had been concerned for some time by the questions which new medical techniques and the advances in biological knowledge pose for society<sup>1</sup>.

These advances are making it possible to apply procedures which were inconceivable until now<sup>2</sup>, and sometimes prompt fears among the public, reviving the old spectre of the apprentice sorcerer. Old wisdom is powerless to assuage these new doubts.

We would like to approach the bioethics field from the humanist angle of free inquiry. Humanism presupposes a continuous debate within society and the will to promote a public area for pluralism and tolerance.

Free inquiry is a secularist value *par excellence* which involves affirming not only a right, namely the right to absolute freedom of conscience, but also and above all a duty: the duty to criticise generally held opinions, all such "idées reçues", including those which are most deeply rooted in people and which are the most pernicious: the untroubled conscience and prejudice.

This paper seeks first of all to raise the question of permanent and organised legal or ethical regulation before dealing briefly with the highly controversial question of research on human embryos. It will conclude by considering the feasibility of giving legal status to human embryos on the basis of human rights.

Briefly, there are two main ways of dealing with the issues raised by scientific advances and their application to medicine and providing adequate safeguards, without at the same time stifling new scientific developments: new legislation can be established or an ethical debate initiated.

## **Ethics and the law**

Is legislation necessary and when should the law be invoked?

It should be noted at the outset that, in rapidly developing fields, the law can never foresee all the situations which will occur in the future and therefore becomes rapidly outdated.

Some people fear that a "judicial void" makes it impossible to combat questionable practices effectively.

Safeguards are clearly necessary, but as has also been pointed out, it is difficult to prohibit scientific research.

*"Prohibiting research not only paralyzes science but is also dangerous because of the grave risk that research will continue in secret and be used for more sinister ends".*

This remark by P G de Gennes, 1991 Nobel Prize winner, stresses the fact that the attempt to set legal boundaries too hastily, runs the risk of hindering useful initiatives and of leading to the a priori rejection of certain beneficial innovations before the potential benefits or drawbacks have been assessed.

Furthermore, if legislation is rushed through, there is the risk that the law will sooner or later be broken once it becomes evident that higher interests demand that an outmoded law should no longer be applied, as has happened in most countries in the case of anti-abortion legislation. The law will therefore be circumvented or not applied, which is always prejudicial to the rule of law.

What criteria could therefore be used to establish a legal basis?

The humanist approach gives priority to two criteria: "the quality of life" of the individual and the preservation of the human environment.

Quality of life means "health in the sense of the full physical, mental and social development" of each individual<sup>3</sup>.

This approach goes hand-in-hand with the continuous evaluation of risks and calls for the development of new forms of "social regulation", namely ethics committees.

Many countries have already adopted a system of regulation of this kind. We believe that examination by an ethics committee of all research programmes and new applications affecting "sensitive matters" in both the public and private domains should be mandatory<sup>4</sup>.

## **Ethics committees**

Ethics must be able to pose questions continually about good and evil.

Legislation clearly stifles ethical debate by laying down strict a priori limits.

Ethical discussion circumscribed by strict rules is likeable to become sterile. In fact such a procedure, by establishing uniform rules in a legal text, makes ethical discussion itself problematical.

Experience shows that whenever societies have adopted legislation incorporating moral rules on which no unanimity exists, the result has been unnecessary internal conflicts.

It is no longer acceptable today in democratic societies for a group, even one with a large majority, to impose its ethical views on society on a whole.

A distinction must be made between rules for governing communal life and a community governed by rules.

Social life should be regulated by ethics committees.

As early as 1991, we suggested<sup>5</sup> that they could provide an effective ethical structure for stimulating discussion, circulating information and establishing closer links between the world of science and the community as a whole.

It would be a two-tier structure. One level would be decentralised and maintain close contacts with research workers on the ground with a view to supervising research on a day-to-day basis. The other would be more centralised and be responsible for promoting the dissemination of information and encouraging ethical debate in society.

Ethics committees provide a flexible and dynamic structure for providing reasoned opinions on research projects and on medical treatment reports.

Moreover, the experience gained from the work of ethics committees has shown that it is possible to overcome the different forms of antagonism vis-à-vis convictions which are often deeply rooted in society.

### **The need to create embryos for research**

Let us take the example of Article 18 of the draft international Convention on Human Rights and Biomedicine, which stipulates that the law shall ensure protection of the embryo and that the creation of human embryos for research purposes is prohibited.

Does protecting the embryo require that all embryos on which research has been carried out be implanted, despite the risk of malformation?

Does protecting the embryo prohibit the creation of embryos for research purposes?

We believe that the protection of the embryo should be based not on the concept of a "potential human being" but on the criterion of the "desire for a child".

The embryo must be protected as a future child who is planned, wanted and wished for by a given person, and it is by protecting the latter that we can effectively protect the embryo.

Otherwise an embryo is nothing more than a mere biological entity made up of growing cells. This approach involves considering the embryo not in abstract terms but in its context, which context we must first of all identify.

Once therapeutic intervention on embryos is feasible, the effects of the treatment on "test embryos" must be established before re-implanting any embryos which have undergone such treatment. Otherwise we would be obliged to re-implant every embryo created with the unacceptable risk of the child being born deformed or, possibly, subsequently having to abort a foetus which has resulted from the development of an abnormal embryo<sup>6</sup>.

Moreover, it is unreasonable to prohibit the creation of embryos for research purposes. Certain genetic diseases may require treating the embryo as soon as the ovum is fertilised or

immediately after it begins to divide. Research can only be carried out on embryos which carry the defect for which a treatment is being sought. Confining research to "supernumerary" embryos from *in vitro* fertilisation would make it impossible to carry out proper experimentation on the genetic disease in question.

Consequently, the first stage must be the creation of embryos for research so that, once the effectiveness of the treatment has been established, it will be possible to treat and implant other embryos which have been checked for defects.

### **Reference to human rights**

As long as the intention is to protect individuals against abuses of authority and to guarantee traditional values and rights (freedom, dignity, privacy, health etc), one remains within the mainstream of the progressive humanism of the Universal Declaration of Human Rights<sup>7</sup>.

Provided the purpose is to protect individuals or groups (cultural groups for example) against abuses of power, not the power of science, but of other individuals and other groups, one is fully justified in staunchly upholding human rights. This enables a series of what are referred to as bioethical problems to be clarified, although this clarification is rarely free from ambiguity or debate.

In several statements based on the Nuremberg Trials and the Universal Declaration of Human Rights, of which the best known is the Helsinki Declaration (1964), the World Medical Association has sought to protect the individual against abuses and aberrations of scientific experimentation by reaffirming the principle of "free and informed consent".

The Universal Declaration of Human Rights offers a solid framework for protecting individual freedom and defending individual dignity and equality.

What about bioethical problems which the authors of the declaration could not possibly have anticipated?

Is it legitimate to refer to the philosophy of human rights when dealing with questions concerning the *embryo* and the *human genome* and to seek to place them under the umbrella of the Universal Declaration of Human Rights by the use of controversial and contested concepts such as "potential human person", etc? It should be noted that the "human genome" is an abstraction and does not exist in reality. What exists is the genome of an individual and this, moreover, changes during the course of life.

It is absurd both from a positivist and a spiritual or idealist point of view to treat the embryo or the human genome as something sacred. This form of "defence" has nothing to do with the advancement of spiritual values or humanity.

Consciously or unconsciously, such an approach is clearly sceptical of the ability of human beings to seize the opportunities now within their grasp for taking control of their futures more deliberately, freely and responsibly.

No one denies, for example, that human genetics call for a high level of vigilance regarding both research and its current and future applications. However, what needs to be

protected is not the human genome or the embryo but persons - their right to information, protection of their private lives, their right to enjoy equally the benefits of genetics, respect for their autonomy etc.

These aspects have, of course, also been covered in the draft legal instruments being discussed. However, they should only apply to those matters which genuinely fall within the ambit of human rights.

It is useful, necessary and sensible to interpret and to extend human rights to new possibilities and contexts because we have to protect individuals in new circumstances and consequently rethink the organisation of society.

There is a danger that this essential, ethical and legal task will be hampered by the unreasonable desire to extend human rights to notions which are confused and which involve a large number of connotations which at times conflict with the spirit of human rights.

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Presented by Dr. G. C. Liénard