Debate

Comment on a proposed draft protocol for the European Convention on Biomedicine relating to research on the human embryo and fetus

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Abstract
Judge Christian Byk renders service to the Steering Committee on Bioethics of the Council of Europe (CDBI) by proposing a draft of the protocol destined to fill in a gap in international law on the status of the human embryo. This proposal, printed in a previous issue of the Journal of Medical Ethics', deserves nevertheless to be questioned on important points. Is Christian Byk proposing to legalize research on human embryos not only in vitro but also in utero?

Keywords: European Convention on Biomedicine; embryo research; status of the human embryo; artificial procreation

Resumé

Mots-clés: Convention Européenne de Biomédecine; recherche sur l’embryon; statut de l’embryon humain; procréation artificielle

Introduction
The legal status of the human embryo has been discussed but not clarified. Since the Warnock committee refused to define it in 1984, it has been considered politically correct to refrain from any attempt to do so. There may be good reasons for such failure to confront and tackle difficult political problems when they concern ethics. However, the practice of artificial procreation, and related techniques such as freezing and experimenting with embryos, create such acute moral problems that an evaluation in the light of a coherent view of the status of the human embryo seems indispensable.

If the proposed draft protocol is intended to define the status of the human embryo, one is left perplexed. The foreword makes it clear, that Christian Byk “is simply making the following suggestion: let us put aside the controversy about the legal nature of the embryo and let us suppose the the embryo could be regarded as - I do not say is - a vulnerable person”.2 The proposed protocol thus pretends to clarify not what the human embryo is, but what it could be regarded as – given the political circumstances.

While this approach may be, to some extent, legitimate it is hardly satisfactory from a philosophical standpoint. It is, nevertheless, correct, as Christian Byk remarks, that “we urgently need reasonable and well-orientated public debate on the convention”.

The following must be considered a contribution to this debate.

Comments
The draft protocol contains nine articles in three sections.

Of the nine articles six are protective of the vulnerable person the embryo could be said to be. The three remaining concern exceptions to the application of this protection.

Section 1: object and general remarks (articles 1 - 3)
The reader of the draft protocol is struck by the double application of the protocol. It is not only intended to regulate research on human embryos in vitro, but it also intends to regulate research on human fetuses in utero. Now, it must be presumed that this double application responds to a political demand, and it would not present any major diffi-
The notion of “therapeutic research” is applied to mean therapy for embryos other than the ones used for experiments (which are then consequently destroyed). This use of the notion of “therapeutic research” undermines the respect for the individual that our societies in the West have fostered so carefully during more than 2000 years. The notion therefore needs clarification.

Section 3: embryos in vitro (articles six-nine)
The section on the embryo conceived in vitro likewise presents two fine and perceptive paragraphs protecting the human embryo conceived in vitro:

“Article six: No embryo should be procreated in vitro for the sole ends of research. ... Article seven: Research on a pre-implantation embryo (in vitro) should only be permitted if this research could directly benefit the embryo, in the context of its implantation in the uterus of the woman, its later development or its state of health. The embryo should incur only the minimum degree of risk connected with this research. ...”

But two conditional prohibitions on cryopreservation and germ-line cell therapy leave it up to the national authorities - whether this function is secured by the law, as in France, or by an independent authority, as in England - to decide whether embryos could be cryopreserved with a view to research and whether research on germ-line cell therapy could be carried out.

Moreover, article eight creates more exceptions:

“Article eight: Exceptionally, research with no direct benefit may be carried out on a pre-implantation embryo:

a) if it is not likely to be detrimental to it and if it respects the conclusions set out in a), b), d) and e) of article five, or b) if its object is to diagnose a particularly serious disorder recognised as incurable.”

Again: in the case of national legislation prescribing destruction of embryos used for research, there is no way research could be non-detrimental to the embryos.

As to the fate of the “spare” embryos, the following provisions are proposed:

“Article nine: Research on an in vitro embryo which cannot be implanted can only be carried out if:

a) the outcome of the research is the development of techniques of medically assisted procreation or antenatal diagnosis as well as the improvement of
knowledge in the field of pathologies that are particularly serious both for humanity and in the field of embryo-genesis; b) the research is not carried out beyond the 14th day of development; c) the research has been subjected to a scientific and ethical assessment by an independent committee.”

Legalising all research on “spare” embryos for the purposes of improving assisted reproduction techniques or antenatal diagnosis, is equal to recognising the subordination of human life to the eugenic project. Many are the voices which have condemned or warned against this vast, problematic project. It is time these condemnations and warnings were faced.

Suggestions and conclusion
The following comments sum up the criticisms made in the preceding paragraphs.

It is impossible to accept the proposal for a protocol as it stands. A separation of research on human embryos and fetuses in utero and human embryos in vitro seems necessary, because of the different situation of the embryos or fetuses in question. The social consequences of widespread research on human fetuses in utero are almost unthinkable and, without the slightest doubt, undesirable. It will be necessary to think of the psychological and spiritual damage to the mother as well as of the planned and exploited physical destruction of the child. Therefore it seems best to treat the questions separately.

Concerning research on embryos in vitro, the notion of therapeutic research needs to be clarified, bearing in mind that it is hardly possible to designate research for the benefit of others as therapeutic research. Especially not if national legislation prescribes the destruction of embryos having served as research subjects.

Last, but not least: what we were waiting for was not a protocol relating to research on the human embryo and fetus. It was a protocol on the legal status of the human embryo. We are still in want of that.

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References
2 See reference 1: 2.
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