

Submission to Department of Health Review of the Human Fertilisation and Embryology Act

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Catholic Bishops' Joint Bioethics Committee

Introduction

1. The Catholic Bishops' Joint Bioethics Committee represents the three Bishops' Conferences of England and Wales, Scotland, and Ireland. It is composed of Bishops from all three Conferences, together with priests and laypeople with relevant expertise.

We welcome the opportunity to contribute to the Department of Health Review of the Human Fertilisation and Embryology Act, as the area of assisted conception raises fundamental issues in regard to human rights.¹ These include the rights of children to protection from physical and emotional harm, and the rights of women and men to protection from reproductive exploitation. So numerous are the moral problems arising in the area of assisted conception that we are unable in this submission to do more than highlight some of the most urgent of these for the Department's consideration.

2. While it is not, of course, the purpose of law to prohibit every moral wrong, legal intervention is called for in areas involving serious unjust harm. Our preferred model is not, however, regulation (Question 2), insofar as this means the granting of licenses for practices such as destructive research

on human embryos under certain conditions. Rather, we favour an outright prohibition of embryo research and all research involving a lethal, unjust assault on a living human individual. We also support a prohibition of particular forms of embryo research, such as cloning, even if other forms of embryo research, no less unjust, will regrettably remain lawful. In the same way, while we do not support the granting of licenses to internet services which provide gametes, we do support the prohibition of such services (Question 9) or, failing that, the prohibition of such services where gametes are anonymously provided. Our aim is to protect children from at least some forms of serious injustice which assisted conception can involve.

Use of embryos in research / treatment

3. There is general agreement among human embryologists that human life begins at fertilisation, at least for those not conceived in other ways, such as twinning or cloning. Most embryos are created when the sperm and ovum combine, though it is certainly possible for embryos to be created from other cells or parts of cells.

4. Where the main disagreement arises is in the status to be attributed to the human organism at the embryo stage. If, however, moral status is linked to the objective interests of the subject, it should be clear that these interests begin as soon as that

¹ While some of the points made in this submission reflect (though our arguments do not rely on) established teaching of the Catholic Church, other points simply reflect our own judgment of the best way of protecting the rights the Church recognises, and are not attributable to the Church as such.

individual comes into existence. It is not necessary to be conscious or self-aware to have objective interests in one's own future, or rights protecting those interests. Just as newborn babies have rights and interests of which they are unaware, the same is true of the human individual at an earlier stage of life. Each human individual has rights and interests concerning his or her welfare: there is no such thing as a human being / organism with subhuman moral status.

5. It is for this reason that we are opposed to all destructive research on human embryos: such research, like all harmful human experimentation, should be prohibited by law. In the words of the Declaration of Helsinki (revised 1975) 'In research on man, the interest of science and society should never take precedence over considerations related to the wellbeing of the subject'.

6. As mentioned earlier, we support, above all, a total ban on destructive embryo research. If it is decided that this fundamentally unjust practice will continue we believe that it should be restricted as far as possible by a ban on particular forms of embryo research. For example, we would support continuing the current ban on research involving replacing the nucleus of a cell of an embryo (Question 59), and would urge that a similar ban be applied to research involving the transfer of pronuclei from the cell of a pre-syngamy embryo into an ovum or embryo, or replacement of the nucleus of an ovum before it is fertilised (Question 58). Indeed, all research involving alterations to the genetic structure of an embryo should be prohibited (Question 60), not least because this paves the way for widespread germ-

line genetic engineering, with all the hazards this would pose.

7. We strongly oppose legalising the creation / destruction of embryos for the treatment of serious diseases (Question 65). Not only is it offensive to the embryo's dignity to be created as a pharmaceutical ingredient, but allowing this would put women under pressure to conceive children whose cells could be harvested to treat sick relatives. Women's eggs would be collected - at some risk to their own lives and health - purely to create embryos to be killed and used to benefit third parties. This would further alienate women from their rights and responsibilities as parents / potential parents. It is hard to think of a practice more removed from what, in our view, is the only proper setting for conceiving new life: an act of love between those unconditionally committed to each other, and to any future child.

8. We wish to emphasise that, in any case, no treatments currently exist using early embryonic stem cells, in contrast to no less than 65 treatments already in existence using adult stem cells.² There should be further investment in treatments of this kind, which are morally acceptable to all, as opposed to treatments which, were they ever developed, would pose serious dilemmas of conscience for many patients and clinicians.

Embryo selection / discarding

9. We support a prohibition of all deliberate discarding or destruction of human embryos, whether on the basis of disability or on some other basis. We regret that this dehumanizing practice has not been seriously

² For details, see the website www.stemcellresearch.org.

questioned in the consultation, at least in regard to those subjected to such discrimination on the ground described above. Having said that, we would certainly not favour adding discrimination on the ground of sex (Question 37) to discrimination on the ground of disability. Nor would we favour adding positive selection for disability to the list of discriminatory tests permitted (Question 32); we are also strongly opposed to the current permission for pre-implantation genetic diagnosis (PGD) to be practised for tissue typing (Question 35). Children have a right to their parents' unconditional acceptance, at every stage of life.

10. Not only PGD, but all deliberate creation of embryos who will not or may not be transferred to the mother should be prohibited by law. We would urge that a far preferable way of preventing the dangers posed by multiple births would be to prohibit not the transfer of multiple embryos (Question 10), but the creation of embryos in greater numbers than will be immediately transferred. While our own position is that all non-sexual reproduction is against human dignity, we very much support legislation to prohibit the worst abuses such production brings. In practice, embryos 'produced' like products are all too likely to be treated like products - for example, subjected to quality control, and discarded if 'surplus' or unwanted. For that very reason, embryos conceived in this way need to be stringently protected, if prohibiting their manufacture is – whether rightly or wrongly – seen as impossible or undesirable.

Welfare of the child

11. The minority of children conceived by assisted reproduction who will survive to birth also need the

serious protection of the law. We very much support retaining the requirement that no treatment be given unless account has been taken of the welfare of any child born, including that child's need for a father (Questions 13, 17). We do not favour amending this requirement so that it relates to medical welfare alone (Question 15) or reformulating it to refer to situations where 'the clinician believes' there is a risk of 'significant harm' (Question 16). The fertility industry is, most would agree, consumer-centred in its approach: the protection of children does not figure highly on the agenda of practitioners. No encouragement ought to be given to those who would subordinate children's rights and interests to the perceived rights, interests or desires of potential parents. Infertility is a very painful experience for couples, and sympathy for their situation is appropriate; however, this does not legitimise any and every treatment which might be provided.

12. The 'welfare of the child' provision should certainly include a reference to the need of the child for both a father and a mother (Question 17); thus to use gametes derived from unconsenting people, including born or unborn children, should remain prohibited (Question 21). People should not be made parents without their consent, and willingness to care for the child. However, where an embryo already exists in storage, the genetic mother has a right and (normally) a duty to gestate her own child, whether or not the genetic father and / or the woman's partner has withdrawn consent. As an absolute minimum, either genetic parent should be permitted to veto the removal from storage and 'allowing to perish' of his or her own embryo (Question 22). Having said this, we do not accept the

imposition of arbitrary time-limits beyond which storage of embryos may not continue (Question 23). One of the most serious injustices involved in IVF is the production of multiple embryos, who are subsequently allowed - perhaps, indeed, intended - to perish, as surplus to requirements. As mentioned earlier, instead of prohibiting the transfer of multiple embryos (Question 10), the law should prohibit the creation of embryos in greater numbers than will be immediately transferred.

Donor conception

13. Children have an interest in a stable family environment, and in knowledge of, and rearing by, their own genetic parents. Research on offspring conceived through donor insemination has shown that many of these offspring are acutely conscious of the fact they have been deprived in advance of conception of half their genetic family.³ We would urge that this serious injustice be remedied as far as possible, by the provision of information on their genetic relatives to donor-conceived people from the age of 16 (Question 40). A central register of donor treatment should be kept, so that donor-conceived people may be given identifying information on relatives, including, but not limited to, those they intend to marry, or with whom they intend to form a civil

partnership (Questions 39, 41). Donor-conceived people should be contacted on reaching 16 by the registrar concerning their rights in this area (Question 45). They should have access to identifying information on both donor-conceived (Question 43) and naturally conceived siblings (Question 44). In the latter case, such access should be reciprocal only after a certain period - for example, ten years, to give donor-conceived people time to come to terms with the truth about their conception before they are approached by social children of their donor father, who may reveal to him the whereabouts of his donor offspring. We would urge that those conceived before 1 April 2005, when anonymity was removed, be given similar rights to those conceived after this date.

Surrogacy

14. Surrogate motherhood involves a further fragmentation and trivialisation of parenthood, in that a woman deliberately becomes a gestational mother with no intention of committing herself to caring for the child she gestates. This practice is exploitative of both the woman and the child, and damages the way conception and gestation are regarded in society as a whole. If surrogacy cannot be prohibited altogether (the option we would prefer), commercial surrogacy, at very least, should continue to be prohibited (Question 50). We do not believe that agencies should be registered with the Department of Health, as the Brazier Committee recommends (Question 51), as this would constitute official endorsement of such agencies. (An analogy might be with the case of prostitution: those opposed to prostitution are rightly unwilling to accept the official registering of brothels, as this effectively legitimises their existence.)

³ See e.g. A.J. Turner and A. Coyle, 'What does it mean to be a donor offspring? The identity experiences of adults conceived by donor insemination and the implications for counselling and therapy', *Human Reproduction* 15 (2000): 2041-2051; A.W. Cordray, 'A survey of people conceived through donor insemination', *DI Network News* 14 (1999/2000): 4-5; A. McWhinnie, 'Gamete donation and anonymity: Should offspring from donated gametes continue to be denied knowledge of their origins and antecedents?' *Human Reproduction* 16 (2001): 807-817.

15. It is, however, necessary to provide as best we can for any children born as a result of a surrogacy arrangement, assuming that the surrogate mother does not wish to keep the child. For reasons concerned with the child's sense of identity, and right to know - and be cared for by - his or her genetic parents, we recommend that genetic parents involved in surrogacy procedures remain eligible for 'fast track adoption'. In the case of married couples, the court order should be made in favour of the couple, under certain conditions, whereas in the case of unmarried or same-sex couples, the order should simply be made in favour of the genetic parent (again, under certain conditions).

16. To give a court order in favour of unmarried heterosexual couples (Question 54) would be to downplay the proven significance of marriage in providing a stable (or relatively stable) environment for children. In the case of same-sex couples (Questions 55-56) such a court order would send out a further message that such couples – despite the fact they cannot offer role models of both sexes – are regarded as no less suitable by virtue of that fact to raise a child. Further, making orders in favour of same-sex couples would encourage the provision of fertility 'treatment' to those who are not infertile and/or will not be made more fertile by the surrogacy arrangement.

Conclusion

17. The area of assisted conception concerns the rights of children, and the law in this area should therefore be particularly robust. It is vital to protect children from being treated as 'consumer choices' of adults, rather than as new human beings to be accepted unconditionally. Most urgent of all is the need to protect

children from being literally envisaged as raw material – as when embryos are used, and even conceived, simply as providers of cells. Society needs to rediscover a profound respect, first, for the child at the beginning of his or her life, and then for the means whereby life is passed on by couples to the next generation. In an area where life is produced in a way very similar to the manufacture of a product, it is all the more important to protect the child resulting to the degree that we can.

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