FROZEN SURPLUS EMBRYOS: AN ON-GOING MORAL DILEMMA

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DISPOSING OF FROZEN EMBRYOS: THE MORAL DILEMMA

A by-product of *in vitro* fertilization has suddenly presented the world of bioethics with a most intriguing moral problem: What to do with many thousands of frozen fertilized ova in storage, forgotten or unwanted, unclaimed? They were kept in storage for their “owners” (?), “parents” (?), “donors” (?), in case they wished to defrost them and activate them for possible fertilization. In 1991 the British Parliament decreed that after five years the unclaimed ones must be destroyed. The five-year deadline was reached in 1996. The only thing that could save the embryos from destruction, by simply defrosting them, was the request of the parents that they be kept longer, or permitting “pre-natal” adoption, or retaining them for research purposes.

The number is significant, probably 50,000 in British clinics in 1996. In one center, Bourn Hall, about 50 miles from London, 10,000 were stored, probably the largest number at any one place in the world. In Hong Kong, still under British rule, there were close to 1,000. The diversity of the donors is also significant, coming from 60 different countries. Contacting them to inquire about their desires/consent, proved very difficult, if not impossible. Some responded, saying they were no longer interested because they had been successful with the first fertilized ovum and they were no longer interested in the “surplus.” Some of those responding gave permission for the destruction of the ova by simple defrosting. Because some wished them to be preserved, a good number will remain at fertility clinics indefinitely.
VARIous REACTIONS FROM AROUND THE WORLD

The international reaction was for the most part very negative. Pro-Life groups spoke of a “New Holocaust.” A leading Catholic theologian, Maurizio P. Faggioni, O.F.M., presenting the Vatican position in L’Osservatore Romano called it a “pre-natal” slaughter of tens of thousands of innocent lives. This is in line with the official Vatican teaching that “The human being is to be respected and treated as a person from the moment of conception... his rights as a person must be recognized, among which in the very first place is the inviolable right of every innocent human being to life.”

While admitting that there was a host of “delicate moral problems,” the Vatican response in L’Osservatore Romano appeared to open the door to “pre-natal adoptions” to rescue embryos from certain death, likening it to taking in an abandoned orphan or child, but limiting this option to married couples.

PRE-NATAL ADOPTIONS VIS-A-VIS SURROGATE MOTHERS

Previously the Vatican had strongly condemned surrogate mothers (“For it is contrary to the unity of marriage and to the dignity of the procreation of the human person”). There was need to clarify the difference between the two, if “pre-natal” adoptions were to be approved. In both procedures the fertilized ovum was implanted in the womb of a volunteer, a “guest” womb. The volunteer was committed to surrender the child at birth to the genetic mother. If, in the case at hand, the volunteer wishes to keep the child as in any adoption, the bonding between the mother and child would be more natural and stronger and it “ought to lessen the psychological difficulties which at times are seen in traditional adoptions.” With these and similar arguments, Fr. Faggioni defended “pre-natal” adoptions in his

1. L’Osservatore Romano, 21 August 1966, pp. 4-5.
3. Ibid., II, no. 3.
lengthy article in *L'Osservatore Romano*. But he also foresaw the possibility of abuse by those who would justify surplus ova in fertilization clinics, by arguing that they would eventually be adopted! In addition he noted the danger to such a fetus from "the dehumanizing criteria of efficiency which govern the technology of artificial reproduction." He asks if it is possible to exclude all forms of selection. He concludes his article by noting that the frozen embryos give us "a powerful example of the inextricable labyrinths into which scientific knowledge imprisons itself when it is placed at the service of individual interests rather than at the authentic good of humanity, at the service of desire only and not reason." 4

**VATICAN RADIO REJECTS "PRE-NATAL ADOPTIONS"**

In spite of the previous statements in *L'Osservatore Romano* giving a cautious approval to "pre-natal" adoptions as an "extreme solution" to save embryos which have been abandoned to certain death, a more recent announcement from Vatican Radio has rejected this solution. 5 The reason for the rejection was the fear that it would "open the path" for the artificial production of embryos, a fear that was expressed in the previous cautious approval of adoption.

This reversal of opinion from Vatican sources shows the acknowledged "grave perplexity" of the issue. Theologians in various areas of the Church had given their cautious approval and praised the many women who had volunteered to adopt the frozen embryos. But the fear of abuse carried the day and, while ruling out adoption, the Vatican offered no solution to the terrible dilemma. The problem still remained: What moral solution could be offered by the Catholic Church to a problem that was not of its making and, if the teaching of the Church had been followed, would not even exist? The initial strong statements by Vatican sources and many Pro-Life groups seemed to rule out the death of the embryos as a moral solution. Death was labelled as "a new holocaust," a "slaughter of the innocents."

4. Ibid.
5. *Hong Kong Sunday Examiner*, 16 August 1996, p. 3.
THE BRITISH OFFICIAL SOLUTION

The British Human and Fertilization Embryology Authority would not honor any pleas to extend the five year limit imposed by Parliament, saying that the matter had been very fully debated, and considering all the options, the best solution was to allow the unclaimed frozen ova to perish and be disposed of in a respectful and sensitive way. They admitted that they felt distress and that it was very frustrating but it was the law. The possibility of adoption was rejected as illegal and unethical without the consent of the parents.

In his article on the frozen embryos, Dr. John Marshall, emeritus professor of neurology in the University of London, alleges that the British Parliament decision setting a five-year limit on retention was not based on any ethical consideration. Five years was selected because of the uncertainty about the effects that prolonged freezing might have on the embryos. No one could predict what subtle changes might occur if freezing was prolonged, according to Dr. Marshall, and because of this uncertainty, the five-year limit was imposed. Neither had anyone predicted that there would be so many frozen embryos after five years. It was an embarrassment to all concerned and suggested that not enough consideration had been given to the need to freeze the embryos in the first place.

Thus, undue haste, lack of foresight, making decisions because of uncertainty of consequences, insisting on the legal force of an arbitrary decision that caused distress and frustration, these and other considerations put the concerned scientific community in this most terrible dilemma, in a matter that, literally, involved life and death.

DISTURBING CHALLENGES TO TRADITIONAL BIOETHICS

In the background there has been building up a climate of moral opinion that was undermining the very basis for moral

7. Ibid.
decisions in this whole area of bioethics. The Technological Imperative has taken hold, insisting that the scientists should be allowed to do whatever they could do. Then the abortion debate fostered another amoral principle: the woman must be allowed to take advantage of whatever medical technology has to offer. Dr. Jack Kevorkian, the “Doctor of death,” as he is often called, states this very clearly when he insists that a doctor should be allowed to do whatsoever his patient requests. Kevorkian, having stated that “the highest principle in medical ethics — in any kind of ethics — is personal autonomy, self-determination,” goes on to conclude that “What counts is what the patient wants and judges to be a benefit or a value in his or her own life. That’s primary.” As an example he states that a Catholic doctor should be prepared to provide an atheistic woman with an abortion.\textsuperscript{9} Richard A. McCormick, S.J., warns against the ethical harm threatening the professional culture of medicine especially in America where the “top cultural priorities are technology, efficiency, and comfort”\textsuperscript{10}

THE SOLUTION OF CARDINAL BASIL HUME, O.S.B.

Given the strong condemnatory statements of the available Catholic sources it seems incredible that the death of the fertilized ova could be proposed as the acceptable moral solution. Yet this is precisely what has happened and the one proposing it is the Cardinal Archbishop of Westminster. Naturally, we ask what arguments could support the proposition of the Cardinal in this most controversial matter. Applying the teaching of the Catholic Church with regard to prolonging life in extraordinary cases when the burdens outweigh the benefits, the solution offered by the Cardinal “to let the ova die,” can be seen as a morally justified option. At the same time he attacked the procedure of storing embryos in the first place: “The bizarre prospect of so many surplus embryos being created and then destroyed betrays the

\textsuperscript{8} Free Inquiry (1941) 14, cited in n. 10 below, 353.
\textsuperscript{9} American Medical News, 10 February 1992, p. 3, cited in n. 10 below, 353.
moral bankruptcy of our society in denying the intrinsic value of all human life."  

CATHOLIC DOCTRINE ON PROLONGING LIFE

The Catechism of the Catholic Church, approved and published by Pope John Paul II on October 11, 1992, was presented to the whole Church and declared "to be a sure norm for teaching the faith." There is a clear distinction in the Catechism between euthanasia and discontinuing medical procedures under certain conditions.

Direct euthanasia, "Whatever its motives and means, . . . consists in putting an end to the lives of handicapped, sick or dying persons. It is morally unacceptable." The Catechism goes on to explain that "an act or omission which, of itself or by intention, causes death in order to eliminate suffering constitutes a murder gravely contrary to the dignity of the human person and to the respect due to the living God, his Creator." The possibility of falling into error of judgment in good faith is acknowledged but there is insistence that this "does not change the nature of this murderous act, which must always be forbidden and excluded."

In a world where "Doctor-Assisted Suicide" is debated, practised by some doctors, condemned and defended, made legal in some parts of the world, we can easily understand why people would be misled and choose direct euthanasia in good faith, out of a false sense of pity for a suffering relative or for themselves.

ALLOWING A PATIENT TO DIE

What does the official teaching of the Church offer to those who are in great pain, suffering all the misery of human illness in our modern world? The Catechism faces the problem and

11. Hong Kong Sunday Examiner, 16 August 1996, p. 3.
13. Catechism of the Catholic Church, no. 2277.
14. Ibid.
15. Ibid.
answers with a principled solution that is entirely consistent with its opposition to direct euthanasia while acknowledging the human condition and the inevitability of death, with human life kept in its proper perspective. “Discontinuing medical procedures that are burdensome, dangerous, extraordinary, or disproportionate to the expected outcome can be legitimate; it is the refusal of ‘over-zealous’ treatment. Here one does not will to cause death; one’s inability to impede it is merely accepted. The decisions should be made by the patient if he is competent and able or, if not, by those legally entitled to act for the patient, whose reasonable will and legitimate interests must always be respected.”

THE PROBLEM OF UNBEARABLE/EXCRUCIATING PAIN

Specifically facing the most disturbing problem of all — unbearable, excruciating pain, the Catechism gives a clear, principled answer which is very compassionate. “The use of painkillers to alleviate the sufferings of the dying, even at the risk of shortening their days, can be morally in conformity with human dignity if death is not willed as either an end or a means, but only foreseen and tolerated as inevitable.”

The health care worker, conversant with Catholic bioethics, will see in these carefully chosen words, an application of the time-honored principle of double effect in the use of the “morphine drip,” which alleviates the pain when there is no other way. If the pathology is serious enough, it may hasten the death of the patient. Note that the patient dies of the pathology but he is freed from the excessive pain and is able to die peacefully because of his mortal illness, not because of any extrinsic action precisely causing/intending his death.

In 1957, Pius XII spelt this out very carefully both from the perspective of the principle of double effect and the matter of shortening life. In 1995, Pope John Paul II reaffirmed this teaching of Pius XII, noting that a person may choose to suffer pain to share in the Lord’s Passion but such “heroic” behavior cannot

16. Ibid., no. 2278.
17. Ibid., no 2279.
be considered the duty of everyone.\textsuperscript{18} The use of painkillers "even when the result is decreased consciousness and a shortening of life" is licit. It is supposed that "no other means exist, and if, in the given circumstances, this does not prevent the carrying out of other religious and moral duties."\textsuperscript{19} The Pope insists that "In such a case, death is not willed or sought, even though for reasonable motives one runs the risk of it; there is simply a desire to ease pain effectively by using the analgesics which medicine provides."\textsuperscript{20} This clarification by the Pope is necessary, given the current confusion in scientific and medical circles between euthanasia and Catholic bioethical teaching on treatment of the dying, and especially on avoiding or withdrawing "aggressive treatment" when the circumstances justify it.

**APPLICATION TO THE FROZEN EMBRYOS**

The frozen embryos were not in pain but they were in a condition which the scientific/medical world, admittedly, could not completely understand. From the beginning of the experimenting on \textit{in vitro} fertilization uncertainty was admitted to be the reason for creating surplus ova. The British Parliament had established a five-year limit on the retention of frozen ova "because of uncertainty about the effects that prolonged freezing might have on the embryo. Deep freezing arrests metabolic processes, but does not abolish them entirely; if it did, they would not resume on thawing."

The Catholic position is that medical treatment may be discontinued when it is burdensome, or dangerous, or extraordinary, or disproportionate to the expected outcome: the burdens would outweigh the benefits. To insist on using such procedures would be "over zealous" treatment. Applying this teaching to the frozen embryos, as Cardinal Hume did, we see that the very condition of the embryos is extraordinary, with the scientists uncertain as to the effects that prolonged freezing would have on the embryos, and with the need for the most sophisticated

\textsuperscript{19} Ibid.
\textsuperscript{20} Ibid.
technology to preserve them.

AN ON-GOING PROBLEM

In spite of all the moral outrage, frozen embryos are still very much with us. An article in the New York Times21 by an embryologist at Columbian Presbyterian Medical Center in New York, Robert Prosser described the elaborate procedures for preserving frozen embryos at the Center. “In a locked room, frozen in tiny straws and immersed in three barrel-like tanks of liquid nitrogen . . . connected to an elaborate alarm system that telephones Prosser if it senses a slight rise in a tank’s temperature . . . No precaution is too great for these embryos.” So goes the description of the pediatric ward of the “Brave New World!”

The number of frozen embryos is ever increasing. Professor Prosser states that “Tens of thousands of embryos are steadily accumulating in tanks of liquid nitrogen across the country, in eerie consequence of the recent success of in vitro fertilization.”22

It is now routine for women to have their eggs harvested from their ovaries, fertilized in the laboratory and then implanted in their wombs. Also, he states that “just as routinely, many have left over embryos, which are frozen and stored.” At the New York Hospital-Cornell Medical Center where there are thousands of frozen embryos, “it is a full-time job for someone to keep track of them.”23

A CHANGE IN ATTITUDE OF WOMEN TOWARDS FROZEN EMBRYOS

A macabre attitudinal change has been noted in women with regard to frozen ova. Whereas a decade ago, a woman was delighted if the arduous regime of hormone injections and surgical procedures produced even a few embryos that could be transferred into her womb, now “people are literally disappointed” if they do not have left over embryos that can be stored. They could choose to discard them but “virtually every couple

22. Ibid.
23. Ibid.
with extra embryos wants them frozen.” It is theorized that some women see these embryos as a sort of “perpetual youth” for the woman who owns them since she can hope to become pregnant in middle age, or even beyond when, normally, she could no longer produce eggs. For some it seems to offer a kind of immortality, since the frozen ova can be stored indefinitely and can be a source of children even after a parent has died, with no thought apparently about the psychological effects it might have upon a child discovering that its real parents have been dead for years, while the child-to-be was a frozen embryo in a tank of liquid nitrogen!

**CONCLUSION**

We are brought back to the prophetic words of Fr. Maurizio P. Faggioni, O.F.M., in the *L’Osservatore Romano* cited above, warning against the dangers to which the fetus would be exposed from “the dehumanizing criteria of efficiency which govern the technology of artificial reproduction” and “the inextricable labyrinths into which scientific knowledge imprisons itself when it is placed at the service of individual interests rather than at the authentic good of humanity, at the service of desire only and not reason.” It is fitting to end by citing again the words of Cardinal Hume attacking the procedure of storing embryos: “The bizarre prospect of so many surplus embryos being created and then destroyed betrays the bankruptcy of our society in denying the intrinsic value of all human life.”