Tolerating vs. Supporting Research That Destroys Embryos: A Difference That Can Make a Moral Difference

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I. SOME ASSUMPTIONS AND SOME IMPLICATIONS OF A SANCTITY OF LIFE VIEW

In this paper I will address several related normative questions about research on human embryos that involves the destruction of the embryos. The normative questions I will address concern the public responsibilities of the various parties having some direct or indirect involvement in research involving the destruction of human embryos. Voters, legislators, public officials, judges, scientists and supporters of research have real though diverse involvement in this research and consequently related but distinct and often complex responsibilities in respect to it. But one’s judgments about these responsibilities will vary in accord with one’s basic moral convictions concerning the moral status of the human embryo and the ethics of killing.

Therefore, I will not here consider questions about public responsibilities of everybody in regard to the support and regulation of this research but only the responsibilities of those who accept that human embryos are human in the morally relevant sense and so persons fully possessing the rights common to human persons. These responsibilities will be recognized more widely, potentially by everybody, only when people come to accept this moral conviction.

I will explore these responsibilities as they emerge in the social world I think we now inhabit, namely, a world in which there is significant disagreement about the moral standing of the embryo. That disagreement complicates the formulation and carrying out of the public responsibilities of those who accept the full moral standing of the human embryo. For those facing their public responsibilities in this area may face limitations on their capacity to prohibit actions they regard as wrong, and may be challenged by proposals to tolerate such actions or even to cooperate in supporting them as

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required by the compromises of politics. These difficult matters must be addressed in defining the responsibilities involved.

In other words, my undertaking in this paper is not to argue for the claim that embryos are fully persons, a conviction I assume here, but rather to explore the moral issues facing those who share this conviction in a context in which the research in question is or is likely to become an established part of the scientific enterprise.

Those who approach the issues of destructive research on human embryos on the basis of this conviction are also likely to accept the moral norm that no one may intentionally kill innocent human beings. Many, including many Catholics following the teaching of the Pope and at least some centuries of Catholic theology and teaching, hold this norm to be absolute, that is, indefeasible by any further consideration of the act: if you know an act you think of doing is intentionally killing an innocent human being, then you know you must not do it. Further considerations may indicate much about the act—and they might mitigate or increase the guilt of doing it—but they have no tendency to reverse the judgment that it must not be chosen. This norm and the conviction that human embryos are fully human lead very quickly to the judgment that human embryos must not be intentionally killed for any purpose, even for the high, and potentially life saving purposes of modern medical research. This moral outlook plainly supports a number of general public responsibilities: not to support this activity, to try to limit or stop it, and so on.

I believe that the norm prohibiting the intentional killing of the innocent is absolute and applies fairly straightforwardly to destroying embryos to create stem cell lines from embryonic cells. For the intention in getting the cells from the embryo includes there not developing in the embryo; that development would quickly render the cells useless for starting lines of pluripotent stem cells. And that intention includes its ceasing to exist as a living thing.

I will not rehearse the arguments for the truth of the norm prohibiting intentional killing of innocent humans, nor the considerations that show it to be absolute. Rather, I will assume a presumption in favor of the absoluteness of this norm, an absoluteness which, if defeasible by any moral consideration, will not be defeated by the consequentialist arguments that seek to justify destroying embryos for the sake of possible future health benefits to others. For those who take the humanity of human embryos as established and reject intentional killing of innocents, that sort of consideration can cut no ice.

This is shown by the fact that this sort of argument simply would not be taken seriously, outside of thought experiments in an ethics class. If it were seriously proposed that a child, a vulnerable elderly or dying person, or anyone else was to be intentionally destroyed for the benefit of others,
particularly if that person did not consent to it, the proposal would be immediately and completely dismissed. Indeed, deliberately putting a nonconsenting person in harm's way, let alone dismembering the person, is usually, if not always, wrong. So, for those who are not extreme and direct consequentialists, great benefit for many people does not justify the intentional destruction of an innocent, non-consenting person. And for those who accept the personal status of the human embryo and are unprepared to discriminate against them, that will include embryos too.

II. IS IT REASONABLE TO DESTROY SOME "EXTRA" EMBRYOS FOR STEM CELL RESEARCH?

But there is a similar line of reasoning that might appear not so thoroughly and directly consequentialist. This is the argument that begins by limiting the embryos to be destructively used for research to a subgroup of those created for but left over from the practice of IVF, namely, those who are doomed to die anyway even if not used as a source of stem cells. The argument develops by maintaining that this use for research is not a loss to the embryo which is to die before implantation in any case and is justified by the help the research can provide to others who will die or suffer without it. 1

This reasoning seems to some to provide a reasonable exception to the otherwise absolute prohibition of intentionally destroying them. Destroying such embryos for research that promises great benefit is not obviously the kind of consequentialist argument which the traditional understanding of the prohibition of killing reasonably resists. The embryo to be destroyed for this purpose is already doomed and this way of ending its life promises that something good comes of this, without any apparent further harm to the embryo.

Another element in this line of reasoning is clearly not consequentialist: the use of embryos created but not needed for IVF avoids the creation of human life with the precise purpose of destroying it for others' benefit. The obvious and important truth of this consideration can be overstated: creating more embryos than are likely to be implanted to increase the likelihood of success through IVF is, to be sure, creating each embryo with some chance of development, and not precisely to destroy it; but, equally, it is creating each one of them as a means to getting some embryos suitable for implantation. So, the creation of each of these embryos has an instrumental aspect; each is not created precisely that it may live. Still, the difference between this and creating an embryo to destroy it remains. The latter is

plainly worse, but that fact has no tendency to show that the former is not also morally bad.

Embryos created for IVF and not immediately implanted in their mother’s or an adopting woman’s uterus can be used for research, or allowed to die, or can be frozen for future implantation or other use, or to put off deciding what to do with them. Unless the parents intend or are open to implantation in the future (as is apparently the case in the great majority of cryopreserved embryos) or consent to implantation in another woman’s uterus (currently a fairly rare occurrence), these frozen embryos can be continued in that condition indefinitely, or they can be disposed of or used for research.

The claim that there is no loss in using those of the “extra” embryos for research who will inevitably die soon anyway is that the manner of their dying, given its inevitability, involves no further harm to them. In the face of no loss for the embryo, the potential benefits of the research justify the destruction of the embryo.

In response, I note that it is likely that many of the embryos not implanted immediately are doomed to die without any hope of developing into a more mature human being. Those immediately handed over for research or discarded are plainly doomed. And many of those frozen are as well. In spite of the fact that the great preponderance of embryos frozen are in that condition for the sake of possible future implantation into the mother’s uterus, it is likely that many couples for many reasons will not take or will continue to postpone that future action. At some point, continuing the cryopreservation is likely to seem pointless to them or to whoever has responsibility for the frozen embryos. So, as a description of the condition of many extra embryos, I concede for the sake of this discussion that many are doomed to die without the chance of implantation.

This condition, however, is not an inevitable condition of the world but is essentially shaped by choices that can, certainly in most cases, be reversed. Since it is on its face a grave injustice to create embryos whose dim future prospects are disposal, destruction in research or indefinite freezing with no prospect of implantation, no embryos should be created in IVF beyond those that can be implanted immediately or in accord with a realistic plan to do so in the future. Therefore, those who use IVF should at least not create so many embryos that some are likely to be extras. But even if that is done, it would remain unjust to any embryo who came to be extra for the purposes of implantation to put before it just these dismal prospects.

To rectify this injustice, implanting any extra is the appropriate response. The most proper agents are the parents who come to see the point. But other women can by consent of the parents adopt the embryo for implantation.

Trying in one of these ways to preserve embryonic life seems nearly always
to be possible, so the inevitability of the no loss argument is not real; it is
strictly contingent on choices people can reverse.

But where implantation or continued freezing without a plan for
implantation is somehow impossible—for example, where the couple is in
charge and refuses the appropriate options or just does not think of them—
the injustice to these embryos by the position in which human choices place
them should be faced, and the least wrong of the options created by the
original injustice, now ex hypothesi irreversible, should be chosen. That
seems to involve continuing in the frozen condition in the hope of future
opportunities for life, and if that is impossible, ending the life in the most
respectful possible way. That option, bad as it is, shows, or tries to show,
some respect for the embryo, and plainly avoids further instrumentalization
of the embryo’s life. Showing respect for such embryos is difficult; but
some couples and clinics have tried to develop ways of doing so.\(^3\)

The destructive use of the embryo to obtain its cells for stem cell lines
hardly tries to show respect but takes it apart for the sake of benefits it
cannot share; that goes beyond ending its life. It wrongs the embryo, by
further instrumentalizing it and by failing to respect it as much as the
circumstances allow.

In short, the inevitable demise of extra embryos on which this argument
relies is caused by wrongful actions whose effects can ordinarily be
reversed. When they cannot be reversed, the wrong to the embryo continues
and the moral requirement is to do the lesser wrong. That can hardly be to
focus on the benefits the destruction promises without considering the
failure of human respect involved in the unjust destruction. Those who
accept the humanity of the embryo and the likely absoluteness of the
prohibition of intentional killing, have little reason to think there is an
exception in this case. They surely should not support public policy in
which choices creating grave injustice are taken to generate inevitable
conditions of social life.

III. TOLERATING THE DESTRUCTION OF EMBRYOS AND BENEFITING FROM IT:
COMPLICITY?

The much discussed decision by American President George W. Bush to
prohibit the use of federal funds to support research involving the
destruction of stem cells includes what many criticize as an unprincipled
exception to the ban on federal funding, namely, the permission to fund stem

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Practices in IVF Clinics in the United States*, 22 POLITICS AND THE LIFE SCIENCES 4, 6-7
(2004).
cell lines from embryos destroyed at a date before the policy became effective. Similarly, 1990 German legislation banning the destruction of embryos and the use of stem cells from them was amended in 2002 to allow the importation and use of stem cells from embryos destroyed prior to the new law’s taking effect, when other stringent conditions also obtained.

It is plain that the American funding ban and the German permission were crafted to allow some stem cell research on embryonic stem cells without allowing or condoning the destruction of the embryos. In the governmental actions taken, the destruction of embryos was simply a fact recognized; neither government gave permission for precisely that, since in both cases it happened before the actions taken. There was nothing the Bush Administration or the German legislature could do about that. Thus, in the normal sense of the word, neither government tolerated the destruction of the embryos, since one tolerates only what one can change. Similarly, since you cannot cooperate with what is already done, neither cooperated with the destruction of embryos by facilitating research on the stem cells retrieved from their destruction. Clearly, in both cases, the government actions were taken to facilitate stem cell research, and they did more than tolerate that. They facilitated and supported it. But what they have supported is not the destruction of embryos.

Moreover, these actions of the American president and the legislature of Germany did not establish but seem to have excluded an ongoing relationship of complicity and cooperation between the approved acts of scientists and the destruction of embryos. Only those already destroyed before the decided dates—dates importantly set prior to the decisions in question—were allowed.

The significance of the date in President Bush’s decision is highlighted by the interpretation of the Dickey Amendment applied by the Clinton administration: public funding of destructive research on human embryos was banned by this act of Congress, but the public funding of research on embryonic stem cells was ruled to be compatible with the destruction of embryos to get these cells, if that were done privately without federal funding. This preserved the letter of the law, and kept the destruction at arm’s length from the funded activities.4

But here the research undertaking cannot avoid complicity in the destruction of embryos. It may be that the stem cell researchers in this scenario could understand the destruction of any particular embryo whose cells they use as already completed and so not something it would be possible to tolerate or cooperate with. But the destruction of embryos envisaged here is ongoing, and the funded research depends on this activity as a source of stem cells. In that ongoing relationship of dependence, those

doing the funded research need and want what the supplier of the embryonic stem cells provides, and they want—even if reluctantly—what it takes for the supplier to provide the stem cells over time.

So, in addition to the complex transactions and cooperation with those responsible for destroying the embryos for stem cells, those involved in the funded research projects need and rely on the supply of stem cells and at the very least hope they will be provided. Likewise, they will also hope that whatever it takes the supplier to provide them, namely, getting them by taking apart embryos. That will be true even if the researchers take no step to guarantee that the embryos be destroyed. To wish in this way that something be done surely means that one favors it.

Furthermore, the researchers in the case at hand also provide a reason, a motive, for the supplier to destroy embryos, providing that motivation involves complicity in the destruction of the embryos. This complicity seems to me more akin to scandal, that is, inducing another to do wrong, than to cooperation with the wrong, which involves actions that facilitate it. For these actions, though very likely in a close and ongoing cooperative relationship such as that between a supplier and a user of what is supplied, are perhaps avoidable in a way that wishing for the supply to continue and providing a reason for its continuance are not avoidable.

In short, setting a date after which embryos destroyed for research will not be an acceptable source for funded research or for importing stem cells for research avoids a form of complicity which would be unavoidable if there were no cut off date. Reflection on the significance of setting different dates, for example, a date after the governmental decisions were made or effective gives further evidence: let us suppose that President Bush had, instead of setting a date prior to his announcement had set a date for a year later. Such an action would have allowed the Clinton administration’s policy to continue a year longer, and therefore would have continued the complicity with destroying embryos which that policy allowed.

If the preceding reasoning is sound, both the German permission of importing some embryonic stem cells and the American President’s permission of the use of some stem cells from embryos destroyed to get them do not involve toleration of, cooperation with or complicity in the destruction of the embryos from which the stem cells in question are derived.

This does not mean that there are no moral objections to these actions. Some who hold for the inviolability of human life object that these actions accept and make use of wrongful actions and their results in ways that fail to give proper witness to the evil done and show proper respect to those who suffered from it. In this case, in particular, the wrong seems very closely related to the benefit others get from the wrong: the taking apart of the embryo is what gets the stem cells. So the situation is not exactly like the case of someone getting a benefit from a human cadaver, even one unjustly
killed. It appears to be a case of getting a benefit from the killing itself, what would occur when one takes a vital organ from a living person. Even here, however, it is not clear that a potential beneficiary who had nothing to do with taking the organ would do wrong in accepting it.

Realizing benefits from the results of wrongs done to other people is very troubling, and often is a further and continuing wrong, for example, when restitution for injustice is possible but refused. In the cases at hand, however, it appears that the wrongs are in the past. Moreover, no one opposes the stem cell research as such. That is clearly good. Still, the possibility that such actions as President Bush’s funding decision and the German legislature’s provision for importing stem cells fail to give proper witness to the sanctity of life remains. And that failure could communicate falsely about the stakes involved, and that might tempt some people to make bad choices.

But that failure is distinct from allowing, tolerating, cooperating with or supporting the destruction of embryos. Moreover, the determination of whether these actions are or are not failures to give appropriate witness is not easily made. Those moral norms, such as moral absolutes, that apply without the decision makers’ use of discretion and personal judgment and discernment do not tell them or the rest of us when not giving witness is a failure to do so. Rather, that discretion, judgment and discernment are necessary to assess the highly variable considerations whose consideration is necessary in determining whether such decisions are proportionate and fitting. In many cases, it is presumptuous for those other than those charged with such decisions to suppose they can make these judgments.

Are decisions like those of President Bush and the German legislature necessary in the circumstances? Is the value of the research sufficient to justify such a choice? Is the need to witness to the sanctity of embryonic life the most important consideration in play? These are difficult questions. But I suggest that very different answers to them are compatible with avoiding tolerating and cooperating with destroying embryos.

IV. A FINAL THOUGHT ON THE STRUCTURE OF MORALLY ACCEPTABLE COMPROMISES

In this section, I address briefly and in general terms the question of what sorts of compromises about funding and regulating the destruction of embryos for research purposes are morally acceptable for those who think destructive research on embryos is prohibited killing of innocent persons. The previous sections indicate that a compromise based on the “no loss” argument is not compelling for those who generally oppose destruction of embryos, and that the use of stem cells from embryos destroyed prior to the
regulatory or funding decision can be legitimate. Two of the other grounds on which compromises might be based will be considered briefly.

First, let us consider compromises grounded on the respect for multiculturalism and moral pluralism. The reasoning here is that there is deep moral disagreement on these issues such that society should not ban them, but should not fund them either; that pair of decisions respects social differences. It is true and important that using the tax support of those who pay taxes out of loyalty rooted in the common good to support something that they believe is seriously opposed to it is unjust to them, particularly in cases where its public support is optional. But this consideration is an argument for refusing public funding, not for refusing to ban the destruction of embryos. It seems that one cannot accept this compromise on the basis of this rationale without accepting that destroying embryos is good for some to do. Refusal to ban the funding for this reason makes sense only if one wants (however reluctantly) those who have no objections to destroying embryos to do so (even if one wishes their moral convictions were different).

Indeed, it seems that whenever a legislator in voting for a funding proposal chooses precisely to provide the funds for research that includes the destruction of embryos, he or she is willing that this be done.\(^5\) Mutatis mutandis, this holds for government officials with the power to fund this activity or refuse funding it.

Second, consider the seemingly similar but really quite different compromises made necessary by the fact that others with power to stop or limit regulation believe that it is unacceptable. In this situation, those convinced that embryos should not be destroyed can rightly compromise to get as much protection for embryos as the circumstances allow. Here, in contrast to the first form of compromise considered above, those who compromise can do so without wanting or willing the destruction of embryos allowed by the compromise: their choice is to go along with a proposed law to protect embryos as well as they can. They recognize that the proposal cannot protect all of them, but they accept that limitation as a side effect of doing what is possible to save some. By consenting to this sort of compromise on these grounds, one is materially implicated in the social facilitation of the destruction of embryos, but this cooperation is material only. It is done not to facilitate, but to restrain this activity as well as one can. I have in mind here the kind of compromise which John Paul II allows in regulating abortion. Presumably, this could also be done in respect to funding as well as regulation if a permissive funding policy were in place and there were prospects for limiting but not eliminating the funding.

These brief reflections on two forms of compromise suggest a general principle: that one can compromise in the regulation and funding of research

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that includes the destruction of human embryos when the compromise is justified by the limitation of this destruction and when one can do so without choosing or intending this destruction. In these compromises one accepts the assistance that one’s compromise gives to this activity as a side effect of an action undertaken solely to limit the damage. This is not tolerating the destruction, since one can do no more to stop it than the compromise; but neither is it supporting it, if support is understood as a choice to see it done. It is rather a case of what St. Alphonsus and the Catholic tradition since have called material cooperation.