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# Testimony for the Subcommittee on Investigations and Oversight

August 9, 1984

Rev. Donald McCarthy, Ph.D.

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*Since 1973, he has served as a resource person and lecturer for conferences in the field of medical ethics. He was elected to the board of the Pope John Medical-Moral Research and Education Center in December, 1977. He moved to St. Louis in August, 1979 to accept the position of director of education at the Pope John Center. In August, 1984, he returned to Cincinnati to become pastor of St. Antoninus Parish, but he continues to serve the Pope John Center as senior educational consultant.*

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My name is Donald McCarthy and I am a Catholic priest of the Archdiocese of Cincinnati. For the past five years, I have served as director of education of the Pope John XXIII Medical-Moral Research and Education Center in St. Louis, Missouri. Our Center studies emerging medical-moral issues from the perspective of the Judeo-Christian tradition and Catholic teaching. Because I did my doctorate in philosophy with a doctoral thesis on the philosophical ethics of Bertrand Russell, one of this century's greatest secular humanists, I have some understanding also of medical ethics from a secular humanist perspective.

I wish to address the ethical questions related to the creation and existence of extra-corporeal embryos from both a secular and a theist perspective. My remarks will conclude with some recommendations for public policy in our nation. The first book which our center published, *An Ethical Evaluation of Fetal Experimentation* in 1976, studied the issue of the dignity and rights of the human embryo in depth.<sup>1</sup> I will first summarize that research and then apply it to extra-corporeal embryos.

### 1. The Dignity and Rights of the Human Embryo

The convictions of science and philosophy about the human embryo, which I find coherent and convincing, are summarized in the description offered by Dr. Robert Edwards, who helped bring Louise Brown into the world: the embryo is "a microscopic human being — one in its very earliest stages of development." In this discussion I will avoid the term "human person" and stick with the term "human being" which Dr. Edwards used.

My acquaintance with scientific fact and sound ethical analysis demonstrates that embryos should rightfully be called "human beings." A human being can be described as a distinct individual with a human nature, that is, with material and organic elements comparable to those of animals, and with an inherent capacity for spiritual activities such as inquiring, understanding, and making decisions. The embryo is a distinct individual and has a human nature.

The embryo is a distinct individual from the completion of the fertilization process when it begins to exist as a single cell of human origin and genotype and begins to manifest its own self-development with cellular multiplication and differentiation. This development culminates in an adult human being by a continuous dynamic growth if only nourishment and a favorable environment are provided. The embryo even produces a hormone which it sends out to the mother's ovary to ensure that the lining of the womb remains in its state of preparation to receive it.

But does the embryo have a truly human nature? Genetics will tell us that it is genetically human. But it obviously shows no signs, as a single cell zygote, of uniquely human activities like abstract thought and free decision-making. Still, if left to develop, the embryo will manifest these activities. We have every reason to believe it already has the inherent capacity for distinctly human development and distinctly human activities. The fact that fully human activity is not yet evident does not make the embryo less human. Sleeping adult human beings do not manifest human activities either. The embryo also needs time to awaken; its uniquely human activities are only manifest some years after birth.

Furthermore, science reveals only a smooth and continuous unfolding in the life of the embryo throughout gestation. We find no evi-

dence of a threshold, a starting point other than fertilization itself, for the beginning of human nature.

The enigmatic quote of Tertullian, a famous third century scholar in the Church, "The one who *will be* a man is *already* one," summarizes our reasoning.<sup>3</sup>

Obviously, for some people, the thought of the embryo as a "human being" verges on the preposterous. Yet, upon reflection, we have no evidence that the embryo is any other kind of being. Does it not deserve, at very least, the benefit of the doubt? Catholic teaching points this out in the strong statement, "Even if a doubt existed concerning whether the fruit of conception is already a human person, it is objectively a grave sin to dare to risk murder."<sup>4</sup>

Hence, we ask the question, how should a society committed to human dignity and rights treat the human embryo? Can one parcel out human dignity and rights according to the months of gestation? Sound reasoning based on scientific fact forces us to accord the embryo full human dignity and whatever rights accompany it. I do not see how the embryo can be given partial human dignity any more than the mother can be partially pregnant.

These reflections in no way arise from religious faith or biblical sources. Hence, one cannot object to developing a statement of human rights for embryos on these considerations. However, the right to life of human embryos now goes unprotected in the United States since Jan. 22, 1973. Hence it may seem futile to discuss further such rights of the embryos as the right to be free of nontherapeutic experimentation or to have parents who are united in marriage.

Nonetheless, many advocates of legalized abortion regard abortion only as a last resort and wish, as far as possible, to respect the life and rights of human embryos. The tragic conflicts which are said to justify abortion can hardly be raised in discussing extra-corporeal embryos which only came into existence after great expense and planning.

### 2. The Rights of Extra-Corporeal Embryos

Because the extra-corporeal embryo generated in a laboratory has come into existence through unique, modern scientific skills, its unique and critical right is freedom from experimental manipulation or exploitation.<sup>5</sup> By exploitation we mean using a human individual as a means primarily for other persons' benefit. The recent discussion about "ownership" of frozen embryos in Australia, highlights the issue of exploitation. The ability to produce human embryos in a laboratory automatically introduces the notion of "quality control" in test tube fertilization. The discussion of embryo "wastage" indicates the exploitative character of some laboratory programs.

Instead, should we not treat every human embryo as if it might grow up to be President? Can we not apply the Golden Rule, "Do

unto embryos what you would want done unto you"? This could mean respecting the principle of human autonomy and informed consent. The only kind of risk or invasive procedure one may be ethically justified in imposing on a human being, without informed consent, is a therapeutic procedure aimed primarily at benefitting that individual.

Another major kind of embryo right is the right to an unimpaired sense of identity by being born the true child of a married couple.<sup>6</sup> Of course, many children are born out of wedlock, but the violation of this right does not eliminate it from our concern. Our nation and other nations have, for centuries, given clear recognition to the family, i.e., a married couple and their children. This recognition flows from justice — out of justice the child-to-be-conceived should be brought into existence in the context which best supports the child's individuality, responsibility, and sense of identity. We recognize that stable families provide that context, even though countless children are deprived of it. Hence, our long-standing, traditional efforts to discourage illegitimacy. The same values are jeopardized, however, in artificial forms of conception which this committee is now scrutinizing.

Our point in this discussion of the right to a family does not rest on the often sad state of family life in the United States today. Rather it rests on this issue: Do we have a right to use scientific planning to deny the child's right to its own married parents? Put in another way, should our society cooperate through its scientific community in further undermining the family?

The debate at this point may turn to scientific data. Can we prove that IVF from unmarried parents or surrogate parenting will further weaken family life in America? The data is not yet available, but what is clear is that such children have been deprived, deliberately and with full awareness by all concerned, of having both parents married to each other. True, adopting homes are often more loving than the homes of natural parents, but the rights of children are to natural parents first of all. Our society ought not collaborate in the injustice of deliberately depriving children of their natural parents.

These reflections about a child's right to married parents would even suggest the exclusion of male donors of semen or female donors of ovum for purposes of conceiving new life without one's marriage partner being the fully natural parent. Artificial insemination of wives by donor sperm is already in use in this country. The judgment as to whether legislation should restrict this practice can be kept separate from the question we are considering here today: actual surrogate parenting and the IVF generation of human embryos from the gametes of unmarried persons. These latter questions are far more serious than those of donor semen or donor ovum.

In concluding remarks I will discuss possible areas of legislative action to meet only the more serious issues in surrogate parenting and IVF.

However, to conclude this discussion of the rights of extra-corporeal embryos let me appeal to our American traditions. We are committed in our democratic heritage to protect the life and rights of the weakest and most helpless members of society. We live in an imperfect world marred by many forms of injustice, discrimination, and needless suffering.

I contend that the class of human embryos who are under discussion today — those generated in a laboratory or those generated in a surrogate mother for flushing out and reimplantation in another woman — have civil rights which need protection. In a free and democratic society, we are called upon as responsible citizens to work for those rights, rather than to acquiesce in technological violations of those rights.

### 3. Protecting the Rights of Extra-corporeal Embryos

A number of specific kinds of legislative protection would at least partially protect the rights of human embryos discussed here. I will offer six suggestions.

1) First of all, legislation could prohibit any form of experimentation on a human embryo which is likely to damage that embryo or to delay its natural development by delaying the time of its transfer and implantation. Only procedures intended to benefit the embryo itself should be allowed.

2) Secondly, any form whatever of freezing of human embryos could be excluded. The long-term risks of such freezing are still unknown. But even without risk, to subject the embryo to freezing without consent violates the dignity of the embryo unless freezing represented a proven kind of therapeutic procedure necessitated by the embryo's condition of health. We would not think of freezing perfectly healthy babies after birth, so I see no genuine and ethically persuasive reason for freezing perfectly healthy embryos.

3) Thirdly, any deliberate taking of the life of an extra-corporeal embryo could be prohibited as well as any neglect of reasonable efforts to implant such an embryo in its mother's body. The legalization of aborting fetuses and embryos does not entail the legalization of destroying them extra-corporeally or failing to implant them.

4) Fourthly, removal of an inviable fetus or embryo from its mother's body for transfer to another woman could be prohibited by statutory definition as a form of experimental manipulation unless necessary to save the life of the fetus or embryo.

5) Fifthly, it would seem that statutes could insist that in vitro fertilization procedures unite only the sperm and ova of married couples, out of respect for the embryo's right to natural parents. The deliberate surrogate arrangement in which a woman brings to full term an infant she conceives from the sperm of a married man for him and

his wife also violates the rights of that child to natural parents, and do all forms of artificial insemination with donor gametes and all forms of extramarital parenting. If the law tolerates such actions, that does not remove the inherent injustice involved, any more than legal toleration of other forms of discrimination.

6) Sixthly, out of respect for the embryo's rights, the law could readily prohibit any parthenogenetic or uniparental procreation by cloning or any human-animal hybridization. No group of adults would seem to have the right to generate a human being by such procedures which include among other objectionable features the deprivation of natural parents for that human being (if, indeed, it were a human being).

These six kinds of legislative protection for extra-corporeal embryos could be supported as a kind of civil rights platform for the minority rights of the tiniest human beings. As indicated, they would not eliminate all violations of the embryo's rights to its own natural parents. But they are desirable on the thesis that some protection is better than none at all.

As a matter of fact, many serious ethicists, myself included, also believe that the very technique of in vitro fertilization violates the rights of human embryos on the ground that they have a right to be conceived in an act of personal self-giving and conjugal love, rather than through a series of technical acts in a sterile laboratory. That discussion must be tabled for now, though.

Let me conclude with the reminder that childless married couples deserve public support in their laudable efforts to become parents — efforts which do not violate the civil rights of embryos. I refer to improved techniques for opening blocked Fallopian tubes, to the possible success of ovum transfer from the mother's ovary beyond the tubal blockage,<sup>8</sup> and even to efforts at transplanting ectopic embryos into the uterus.<sup>9</sup>

This discussion of embryo rights may have sounded like a tempest in a test tube! But we have sought to offer ethical evaluation of remarkable new capacities to dominate human lives. And, the more remarkable the capacity, the more urgent the need for ethical reflection and the honest pursuit of life and liberty, as well as happiness, for our embryonic sisters and brothers, any one of whom may be President some day!

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2. Edwards, Robert and Steptoe, Patrick, *A Matter of Life* (London, 1981), p. 101.
3. Tertullian, *Apologeticum*, IX, 8 PL 1, 371, 372.
4. Sacred Congregation for the Doctrine of the Faith, *Declaration on Abortion* (Washington, D.C.: U.S. Catholic Conference, 1974).

5. Cf. Article 4, part b) of the *Charter of the Rights of the Family*, published in Rome by the Holy See, Oct. 22, 1983: "Respect of the dignity of the human being excludes all experimental manipulation or exploitation of the human embryo."

6. Cf. *In Vitro Fertilisation: Morality and Public Policy*, statement by the Catholic Bishops' Joint Committee on Bio-Ethical Issues on behalf of the Catholic Bishops of Great Britain, 1983, nos. 16-18.

7. Cf. *ibid.*, nos. 10-15.

8. Cf. "Should Catholic Hospitals Encourage Low Tubal Ovum Transfer?" in *Hospital Progress*, March, 1984, pp. 55, 56.

9. Cf. *Ethics and Medics*, Sept., 1984.

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