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Moira M. McQueen

J. Leo Walsh

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Pragmatism and Conscience: A Religious Perspective on Competing Values in Embryo Experimentation

by

Moira M. McQueen, Ph.D. and Fr. J. Leo Walsh

Dr. McQueen is a Senior Lecturer in Christian Ethics at the Faculty of Theology, University of St. Michael's College, Toronto. There also, Fr. Walsh is Associate Professor of Christian Ethics, teaching Fundamental Christian Ethics and Medical Ethics.

Most people realize that key terms such as "Reproductive Technologies" immediately involve us in the most major issues of our society. Yet a spokesperson for Health Canada recently said that any new regulatory body for reproductive technologies would include representatives of those who oppose some of the proposed measures on religious and moral grounds. The reason given was that: "This is not just a medical issue..."¹ It is remarkable that this needed to be restated, and speaks volumes about our overly specialized culture where we are sometimes too dependent on science, which, taken in a narrow sense, reigns supreme.

Who we are in relation to one another is a fundamental issue for all cultures. How we treat one another continues to shape our culture. We have learned many lessons from history about how that has been done, and how we continue to influence it. Culture is not something passive in which we are immersed. It is true that we are strongly influenced by the society in which we find ourselves, but society is itself a product of historical conditioning, and in many ways we help to shape future society. Our values lie at the heart of this task, and it is at this level that the shaping of culture is the most challenging. Who are we? Why are we here? What is our relationship to others? How do we treat each other? When does any responsibility towards another begin? And, digging even more deeply,

when and how does the other begin? Action based on these sorts of questions will determine what our culture and society will become, and therefore demand the most careful examination possible.

In Canada, a Royal Commission submitted its Report on Reproductive Technologies to the Federal Government in 1993.² We will look at that part of the Report which deals with embryo research. We will then examine the Canadian government's move towards legislating in this area,³ in light of its reliance on the Commission's Report and on the guidelines on the Canadian Tri-Council policy statement, "Ethical Conduct for Research Involving Humans", issued in 1998.⁴ We will analyze the ethical stance, methodology and conclusions of all three. The National Institutes of Health in the United States have also recently issued proposed new guidelines dealing with stem cell retrieval from embryos, and we will look at the changes in approach that they recommend. We will contrast what we consider to be the "pragmatic" approach utilized by these bodies with the approach to embryonic human life affirmed by Pope John Paul II in his encyclical *Humanae Vitae*, the Gospel of Life.⁵ We will also analyze the papal ethical stance, methodology and conclusions. It should be pointed out that his ethic is used not simply because it represents the stance of one particular religion, that of the Roman Catholic community, but because, in its espousal of natural law principles, that church has always claimed that objective moral norms can be appreciated by humankind at large. We will examine statements on the status of the embryo and embryo experimentation made by some leading Roman Catholic theologians, which reveal that opinion is far from unanimous in their ranks, despite magisterial teaching. Finally, the statement of the one dissenter on the Royal Commission will be analyzed. Overall, our aim is to look at how we shape our culture through our decisions about experimentation on human embryos.

The pragmatism we refer to in this presentation is the common — or — garden type. We are not referring to any specific theory of philosophical pragmatism, such as that represented by William James or John Dewey in their rejection of formalism. We simply mean making a decision to follow a course of action which will bring about certain desired results without reference to the ethical or unethical nature of such action.

The Royal Commission

The Royal Commission recommended that some practices, e.g., surrogacy, should be banned in Canada, but did not advocate a ban on embryo experimentation.⁶ Taking account of the many intervenors who demanded that the dignity of the zygote and embryo be respected, the

Commission said that they "share the concern that zygotes be treated with due respect."⁷ The commissioners noted that the zygote is human, that it is alive, and that it "may have the potential to become a human being."⁸ The Commission stated: "These criteria alone confer a degree of moral status on the fertilized egg, even at its earliest stages of development."⁹ It accorded "a measure of respect and protection to it."¹⁰ It did not define what "a measure" means, but immediately went on to point out that, in Canadian law, the embryo or fetus is not a person. Once this note is introduced, any talk of respect becomes so amorphous as to be useless. The Commission then adopted the current "14 days" standard, up to which some types of experimentation should be considered acceptable. The reasons given were that the 14 day limit "recognizes the legitimate value of medical knowledge and the need to find a morally acceptable compromise in a pluralistic society in which there are various views about the relative importance of different stages of embryo development."¹¹ Quoting the Medical Research Council, which existed independently before the Tri-Council, the Commission noted that they thought the 14 days rule may accord with a "pragmatic sense of ethical acceptability."¹² The Commission cited other proponents of the 14 days rule to support their stance, and stated: "We believe that in a pluralistic society, this approach is reasonable, and indeed is the only realistic basis for resolving certain ethical issues."¹³

It is important to point out that the Commission's stated framework of ethics did not include pragmatism as one of their espoused values. Chapter 3 of the report is entitled: "Ethical Framework and Guiding Principles." Under the broad orientation of "the ethic of care", the Commission settled on eight guiding principles. These were: autonomy, equality, respect for human life and dignity, protection of the vulnerable, non-commercialization of reproduction, appropriate use of resources, accountability, and balancing of individual and collective interests.¹⁴ There was no mention here of pragmatism.

Bill C-47

Following the Royal Commission's Report several years later, the Canadian government proposed legislation in 1997, in the form of Bill C-47. The preamble stated that Parliament is "gravely concerned about the significant threat to human dignity" in reproductive technologies, and recognizes the need for measures "to protect and promote the best interests of children affected."¹⁵ This could be supported by most people, and is in the same vein as the report's stated intentions in declaring its ethics of care. Until Section 7 the wording of the bill was very mild and cautious, but the notion of experimentation was suddenly introduced in Section 7(3), which

said that, "No person shall use a zygote or embryo for the purpose of research or implantation in a woman unless the donors of the ovum and sperm that produced it have consented to its use for that purpose."¹⁶ It is understandable that zygotes and embryos would be destined for implantation, since that is their main purpose in reproductive technologies, but their use for research is an entirely different matter. There is a vast difference between implantation and research, and it seems that the distinction is somewhat papered over here because of their linkage in the one clause. Richard McCormick uses the term "hineingeshmuggelt" for this type of maneuver, when one concept is smuggled in under the umbrella of another, less controversial concept. Perhaps this was not the Bill's intent, yet its use of language in this section became exceedingly pragmatic. Concepts such as "production" and "use" appeared, not the type of language guaranteed to favor equal dignity and respect. It is clear that there could have been no thought of recognition of autonomy of the zygote/embryo here, if it is something that may be "used." The Bill did not progress because of an election call in 1997, but is still expected to form the basis of proposed new licensing regulations.

Tri-Council Policy Statement¹⁷

The current Tri-Council Policy Statement on ethical conduct for research involving humans is also likely to be influential on government policy. In its ethical framework, it states that "research involving human subjects is premised on a fundamental moral commitment to advancing human welfare, knowledge and understanding, and to examining cultural dynamics."¹⁸ It continues: "Part of our core moral objection would concern using another human solely as a means towards even legitimate ends."¹⁹ The Tri-Council states that this objection, dependent on the familiar moral imperative of respect for human dignity, means that it is unacceptable to treat persons solely as means, because doing so *fails to respect their intrinsic human dignity and thus impoverishes all of humanity.*²⁰(Emphasis ours). Further, it requires that *the welfare and integrity of the individual remain paramount in human research.*²¹(Emphasis ours). In its Guiding Ethical Principles, the Tri-Council states that the common standards, values, and aspirations of the research community, including respect for human dignity, respect for free and informed consent, and respect for vulnerable persons.²²

Noting in Section 9 that the report of the Royal Commission is an "authoritative and thorough analysis of current Canadian viewpoints, reflecting both the divisions and areas of consensus within society on these important matters", and that statements of government policy have arisen

from the Report, the Tri-Council suddenly and somewhat baldly states: "Informed by such public and scholarly discussions, this Policy suggests to REB's a pragmatic position on research involving human reproduction."²³(Emphasis ours). In the next breath, the Tri-Council says that this is "...broadly consistent with a graduated approach that correlates permitted interventions with the developmental stages of the human embryo or foetus",²⁴ and later continues, "...in those cases where human embryos are created for reproductive purposes, and subsequently are no longer required for such purposes, research involving human embryos may be considered to be ethically acceptable..."²⁵ Certain conditions apply, the most important being that such research may only take place during the first fourteen days.²⁶ The explanation given for this is that it is "...based on the stages of biological development. Implantation usually begins at approximately the sixth or seventh day of development, and is usually completed around 14 days, beyond which time the embryo proper starts to develop the primitive streak, or the first indication of neural development."²⁷ Many things could be disputed about this reasoning. What does the timing of implantation have to do with the question of human dignity? Why is the phrase "embryo proper" used in this context? Anything that had been said so far in the Policy Statement speaks of zygotes, embryos and fetuses; there is no mention of "the zygote proper", "the embryo proper", or "the fetus proper" until now. The Council's wording suggests that until 14 days the entity in existence is *not* an embryo. Also, we note that while the development of the primitive streak may become apparent at 14 days, there is nothing to suggest that before that time the said embryo is less than a self-organizing organism that both divides according to its own dynamics and produces what is termed the primitive streak from within. It is difficult to see on scientific grounds that the beginning of the primitive streak is the turning point of an entity into an "embryo proper". The Tri-Council gives no other reasons for this pragmatic decision, and we question why it abandoned its stated principles concerning human dignity, respect for the vulnerable, the minimization of harm, and other human protectives where these embryos are concerned.

National Institutes of Health

In the United States, the NIH are proposing new guidelines on embryonic stem cell research which include a change in approach to embryo experimentation similar to that proposed in Canada.²⁸ They are now recommending that stem cell research be done on week-old living embryos. In a reversal of all legislation to date, these guidelines tell researchers to let donor parents know that early embryos will not survive

this process, but “will be handled respectfully, as is appropriate for all human tissue used in research.”²⁹ The description of embryos as “tissue” is telling in its deliberate downplaying of their human status. Justifying this new departure by claiming that embryos used would be those “in excess of clinical need”, and which would otherwise be destroyed, the NIH are prepared to depart from long-standing federal and international safeguards on research concerning human subjects.³⁰ The word “pragmatism” comes readily to mind once again.

One of the major reasons for allowing this experimentation is that embryonic stem cells were thought to be the only source of pluripotent cells, i.e., cells capable of forming all the different human tissue types. This has enormous implications for human therapeutic purposes, and, as far as the NIH are concerned, such benefits outweigh the destruction of the embryos harvested — their human status is now ignored. Recently, however, other scientists have shown exciting new advances in this field, alternatives to using embryonic sources. Research has already shown, for example, that stem cells from muscle tissue can produce different types of blood cells, and bone marrow cells have produced other types of tissue.³¹ It is not yet known if these stem cells cannot be made pluripotent, which would shift the emphasis on the stated necessity of using embryonic sources to the availability of adult sources. According to *Origins*, a leading researcher in this field has already concluded that “there is a stem cell in the adult bone marrow that is capable of becoming anything if you give it the right signal...”³² Further advances have been made in “immortalizing” adult cell cultures and in maintaining adult stem cells in a relatively undifferentiated state for months.³³ This means that embryonic stem cells are *not* unique in their capacity for self-renewal, as has been thought, nor are they unique in their capacity to create other types of tissue and cells. The knowledge that pluripotent stem cells can be obtained from consenting adults means that research should be encouraged in these areas and that stem cell research on embryos cannot now be claimed to be “necessary”. If embryos are always to be respected as human, then destroying them to harvest stem cells clearly assaults and destroys their dignity. The pragmatic approach of the proposed Canadian and American guidelines must be challenged by those who realize that any attack on the human dignity of the embryo is also an attack on *all* human dignity. We must *never* treat human subjects as a means. Not only is this abhorrent in itself, but our own human dignity and security are thereby completely compromised.

The Official Teaching of the Roman Catholic Church

Another approach is not only possible, but would be in line with the avowed statements of principle of these groups, who, by their decisions, have the power to influence the shaping of our culture in a definitive way by their willingness to allow experimentation on the human embryo. That is the approach taken by the Roman Catholic Church, with its insistence on following through on the principle of respect for human life at all its stages. We stress that this is not an appeal to authority. The Royal Commission, the Tri-Council, the NIH and the Roman Catholic Church all state principles concerning respect for life. Only the Church shows consistency in applying these principles universally.

With regard to recent teaching, a document issued in 1974 said that, despite differing historical theological opinions on ensoulment (due, we suggest, to false biology rather than dispute about hylomorphism), there was never a doubt about the illicitness of abortion.³⁴ Where a human life exists, it deserves protection whether or not ensoulment has taken place. The Church did not want to become embroiled in philosophical argumentation (which may have taken from the main point about the protection of the unborn). *So the Church's argument for protection is based not on an indisputable argument about the personal status of the embryo, but rather on the fact that no philosophical argument, or, for that matter scientific argument, can ever prove that the embryo is of less than fully human status. For this reason the embryo must be treated as fully human from the first moment of its life. By ignoring the probability of the status of the embryo, one would show oneself as being prepared to kill a human person.*

In 1987, in *Donum Vitae*, the same Congregation repeated what it had said in 1974.³⁵ In Pope John Paul's encyclical *Evangelium Vitae*, Catholic teaching persists in what can be termed its consistent ethic of life. John Paul is actually inviting us to penetrate to the heart of our culture by asking us to reconsider its foundations — what are human rights, and, more importantly, who qualifies as the subject of rights? His encyclical and previous teachings make it plain that these questions are still not resolved in our society, and part of the reason for that is our reluctance to confront major ethical problems. Rather, we pretend that we have dealt with these matters, but every new reproductive technology presents us with another question about the worth and dignity of the human embryo, and what we may or may not do. These decisions are what shape us as a people, and thereafter shape our culture. John Paul presents this as a choice between a culture of death and a culture of life. And it is a real choice — we will influence our pluralistic culture and its practices by this choice.

Views of Some Roman Catholic Theologians

Roman Catholic theological opinion is not unanimous about the personal status of the early human embryo.³⁶ As Carol Tauer pointed out in her 1985 article (see below), many theologians who deny personal status simply ignore the claim of the Vatican documents that it is wrong to act in a case of doubt about the personhood of the embryo.³⁷ There have, however, been several attempts to deny the validity of the Vatican's principle, including that of Tauer herself.

1. Richard McCormick

McCormick refers to the classical example of a hunter firing into the bushes when the movement might have been caused by his hunting companion or by a wild animal.³⁸ Though in normal circumstances this may be morally wrong, he says, if there were urgency in the case (food is needed to feed the hunter's family, for example), then firing into the bushes is morally justified. It would seem that this argument misses the point. It is certainly true that urgency might persuade a rather scrupulous person that he/she should act when there is no probability that a person's life is involved, but rather, for all practical purposes it is impossible that a person be present. However, this is a far cry from the probability of a person's being present which is envisaged in the classical "hunter's case". In this case, probability will not save the person's life should a life be at stake, which is the answer of classical probabilism. Indeed, we begin to sense that the cart is pulling the horse. In other words, the urgency of embryo research is so demanding, that a solution "has to be found", and the classical case becomes the vehicle of argumentation.

2. Lisa Sowle Cahill

Cahill believes that there is a growing importance to be placed on developing fetal life.³⁹ The fetus, however, is never of such worth as to override the right of the mother to preserve her own life through abortion. Indeed, abortion may be morally right when chosen to preserve other values in which the mother may have an interest greater than her own life.⁴⁰ Cahill does not provide examples of such values.

If the fetus were a person at any stage of existence, then it would be equal in status to the mother. It is not surprising, then, that Cahill is unwilling to recognize the personal status of the embryo. Cahill equates the chances of the early embryo's being a person with the chance of a derelict somehow having gotten under your car which was locked in a garage. We disregard the latter possibility — we don't check under our cars

each morning — and we should equally disregard the possibility of the personal status of the embryo.⁴¹ It would seem that only a Lonerganian “scotosis” (blindness) could provide a foundation for such a dismissal of the probability of personal status for the embryo (See the arguments referred to in endnote 36.). Even were a positive doubt to be admitted, there would be sufficient probability about the personal status of the embryo as to bar its being used, owned or directly killed. Further, no “has special status but is less than personal” ascription will save the embryo from any of the above.⁴²

3. Carol Tauer

Tauer argues that probabilism deals with the doubt of law/doubt of fact distinction well known to probabilists.⁴³ She claims that facts are empirically verifiable and, since the status of the embryo cannot be proven empirically, then we are not dealing with a doubt of fact. We are dealing, she says, with a theoretical doubt, and this is more akin to a doubt of law. There is much to be said about this article. Suffice to say here that a definition of “fact” does not solve the question. The existence of many of our deepest truths is not empirically verifiable. I cannot so prove that I am loved by God or by any human person. These truth claims, however, fall within the principle of non-contradiction. They are true or they are not true. And that is what is important when we think about the personal status of the early embryo. It is a person or it is not. That we cannot prove the matter empirically does not license us to treat the embryo as less than one of us, as human persons.

Dissenting Opinion on the Royal Commission

The final part of our paper deals with the dissent written by a member of the Royal Commission, Suzanne Scorsone, on the topic of embryo experimentation. Was it a case of pragmatism versus conscience for her? Scorsone based her objections to embryo experimentation on the fact that the same norms of research should apply to them as to all other human subjects. She stressed that “embryo research is the only form of research on human subjects in which those norms are disregarded.”⁴⁴ She thought it important to point out the difference between embryo experimentation and abortion. In the first case, there is no conflict between the desires, health or welfare of the mother and the embryo, and no balancing of rights. Many people who are pro-choice concerning abortion think that, when such conflict is absent, the embryo has great significance and value. Others simply fear the instrumentalization of the human. Scorsone went on to remind us that the Commission adopted ethical principles within its overriding “ethic of care”. She agreed with these principles, which

included non-maleficence, protection of the vulnerable, informed consent and respect for life. An embryo used for experimentation is human, and therefore deserves the respect due to all members of the human race: it is certainly vulnerable, it cannot give informed consent, and it is known that it will die. Scorsone stated: "I do not see how these principles can be consistent with experimentation on embryos resulting in their death."⁴⁵ We agree.

Scorsone's dissent raises many further points demonstrating reasons for treating human embryos with respect, but the major fact to be stressed here is that the Commission violated its own principles where the human embryo is concerned.

Conclusion

We have looked at the topic of embryo experimentation through examining the ethical stances of the Royal Commission on Reproductive Technologies, the Canadian government, the Tri-Council's Policy Statement, the proposed guidelines of the NIH, the Roman Catholic Church, some Roman Catholic theologians and the one dissenter on the Royal Commission. We conclude that the first four bodies have adopted a pragmatic approach to embryo experimentation, an approach which breaches the principles that they carefully set out, and which they apply in all other cases concerning human beings. The Roman Catholic approach, and that taken by the dissenter on the Commission, applies the same principles to the human embryo as to any other human being. The Roman Catholic theologians quoted are doubtful of the full personal status of the early embryo, and therefore could support destructive experimentation. The ethical question which persists is whether the "pragmatic" approach being recommended for legislation in both Canada and the United States bodies is justified. In light of their previous guidelines and regulations we do not see how such a position could be ethical or logical. We hope that any new regulatory body in this field will reexamine the principles adopted thus far, and conclude that new support for embryo experimentation, despite its apparent potential for medical advancement, is not something that will benefit our society and culture in a truly human way, just as no other kind of experimentation on human subjects can benefit humanity if it disregards the dignity of persons. In the words of John Paul II, the Church "wants simply to promote a human state. A state which recognizes the defense of the fundamental rights of the human person, especially of the weakest, as its primary duty."⁴⁶

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41. It could be noted here that Cahill is simply presenting the views of others with respect to remote possibility. The way that the views are presented without mention of the other side makes it perfectly clear where her thinking lies.
42. Cahill is on much firmer ground when she says, "My intention here is not to settle the question of personhood, but simply to display a few of the reasons why people can differ in good faith". See *America*, vol. 168, (May 22, 1993) 6-11, at 8.
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