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THE STEM CELL DEBATE¹

William Wagner and Ursula Weide***

The Center for Law, Philosophy and Culture of The Catholic University of America convened a Colloquium on “Ethics, Public Policy and Law—The Stem Cell Debate,” on October 4 and 5, 2004, for the purpose of facilitating a conversation among Christian ethicists, biologists, lawmakers, and experts in public policy on the appropriate scientific and ethical status of human embryonic life in stem cell research. Its goals included arriving at better informed and more fully self-critical arguments in defense of the principle of the inviolability of the human embryo; an open-minded and mutually respectful exchange of views between Christian ethics and leading researchers in the biological sciences; and creative and attentive dialogue, discussion and debate on American law and policy in the area of stem cell research affecting human embryos.

For the sake of ensuring that the colloquium discussion had the liberty of a truly global vision, the Center began by inviting two visionary thinkers, Nigel Cameron of the University of Illinois and David Schindler of the John Paul II Institute, to present keynote addresses seeking to discern the meaning of the larger picture. To ensure that the discussion was attuned to the goals, objectives and ethical views among contemporary scientific researchers in the biological sciences, the Center gathered scientists such as Nicanor R.F.G. Austriaco, O.P. of the Dominican House of Studies in Washington, D.C.; Maureen L. Condic of the University of Utah; William Hurlbut of Stanford University; Rudolf Jaenisch of the Massachusetts Institute of

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1. We wish to thank the Our Sunday Visitor Foundation and the Konrad Adenauer Foundation for their generous grants which made the colloquium giving rise to these published proceedings possible, as also the German Ministry of Culture for its travel support for participating German scholars.

Technology; Ronald D.G. McKay of the National Institutes of Health, and Evan Snyder of the Burnham Institute of La Jolla, California.

To bring into focus Christian ethics in relation to the question of the moral inviolability of the human embryo, the Center drew upon the expertise of such scholars as Joseph Boyle of the University of Toronto; John Berkman of The Catholic University of America; Marian Brady, S.P. of The Catholic University of America; Joseph E. Capizzi of The Catholic University of America; Norman Ford of the Caroline Chisholm Centre for Health Ethics in Melbourne, Australia; Hille Haker of Harvard Divinity School; Mark F. Johnson of Marquette University; John Keown of Georgetown University; Patrick Lee of the Franciscan University of Steubenville; Dietmar Mieth of the University of Tübingen; and Janet Smith of Sacred Heart Seminary of Detroit, Michigan.

For an appreciation of relevant issues of law and policy, the Center provided a hearing for lawmakers, with specialized expertise in the area, such as The Honorable Sam Brownback (United States Senate) and The Honorable Dave Weldon (United States House of Representatives); and experts in law and policy, such as Eric Cohen of the Ethics and Public Policy Center of Washington, D.C.; Richard Doerflinger of the United States Catholic Conference; Rebecca Dresser of Washington University; Yuval Levin of the President's Council on Bioethics; and Carter Snead also of the President's Council on Bioethics.

Because the reach of the Colloquium's focus on law and policy extended beyond domestic issues to those of international law, the Center broadened its outreach to include speakers with expertise in the international regulation of issues in bioethics, including George J. Annas of Boston University; Robert J. Araujo, S.J. of the Holy See's Permanent Mission to the United Nations; Rebecca Bratspies of the City University of New York; Barry Carter of Georgetown University, William Saunders of the Center for Human Life and Bioethics of the Family Research Council; William Barbieri of The Catholic University of America; and Andrea Biondi of the Center of European Law, King's College, London.

The Center aspired to draw from its study of the stem cell debate a more systemic basis for understanding and evaluating the formation of bioethics policy under American law. It sought to realize this goal by seeking a sharper profile for the American approach by giving the colloquium, the form of a comparison with a second leading legal system with a well defined response to the issue of research on human embryonic stem cells. It chose for this comparative role was, not surprisingly, that of Germany. Germany lends itself for this role because, as Nigel Cameron points out, "the critique of biotechnology is a deep-seated right across the political-cultural

spectrum”² in Germany, with the consequence that the German legal system correspondingly has a versatile scientifically and ethically well informed response to the issue of the research use of human embryonic stem cells. Further, German society presents an interesting comparison and contrast with that of America, because, while starting from a more-or-less similar set of ethical values, its legal scheme funds the human embryonic stem cell research which it permits, while prohibiting most. The American scheme, for its part, permits all human embryonic stem cell research, while refusing to fund nearly all of it.

Reflecting this comparative law structure, the Colloquium’s full title was, therefore, “Ethics, Public Policy and Law—The Stem Cell Debate: The Federal Republic of Germany and the United States of America.” The Center was honored, moreover, to welcome the German Konrad Adenauer Foundation as the Colloquium’s formal co-sponsor. In addition to German ethicists Hille Haker and Dietmar Mieth already mentioned above, the Center assembled members of the German Parliament, The Honorable Maria Böhmer and The Honorable Hubert Hüppe, and German law and policy experts Christian Hillgruber of the University of Bonn and Werner Heun of the University of Göttingen. In addition, to foster a genuinely academic comparison of the two national legal systems, it included the perspectives of comparativists Mary Anne Case of the University of Chicago; Russell Miller of the University of Idaho; and William Wagner of The Catholic University of America.

Finally, it merits mention that the proceedings of the Colloquium as they appear below are the product of the skillful and, by prior agreement, largely independent editorial judgment of the board of the *Journal of Contemporary Health Law and Policy*, rather than by the Colloquium organizers. It was the decision of the editorial board—in itself sound—to organize the published version of the proceedings around the colloquium papers dealing directly with the core theme of the moral inviolability of the human embryo. Thus, the reader finds the papers following of Patrick Lee, Dietmar Mieth, Joseph Boyle, and William Hurlbut. The paper of Nigel Cameron serves to provide these papers with their broader or thematic introduction. Then, to sketch the context in law and policy, the editors have included, following these, as a representative paper on American law, that of Russell Miller, and on issues in international law, that of Robert John Araujo, S.J.

Two substantial elements contributing to the original chemistry of the colloquium go missing from the printed version. These missing elements also had their special value, and can still be seen in the archived video of the it at http://law.cua.edu/lpci/archives/conferences/Stem_Cell_Debate.cfm. One of these elements occurred with the scientific presentations by such

2. Nigel M. de S. Cameron, *Biotechnology and the Future of Humanity*, 22 J. CONTEMP. HEALTH L. & POL’Y 413, 414 (2006).

leading researchers as Rudolf Jaenisch of the Massachusetts Institute of Technology and Ronald McKay of the National Institutes of Health. Their presentations were characterized by scientific precision and factual clarity. They were imbued with a manifest appreciation for the value of knowledge for its own sake. And, not least of all, they brought a certain welcome element of pluralism to the ethical exchange, where some espoused counterviews to some but not all of the positions explored by the ethicists who are published here, as such probably reflecting at points at least a passing consensus among some of their scientific peers. This element of counterpoint greatly enlivened the colloquium, and we are no less grateful for it than we are for the strictly scientific explanations these speakers offered.

As the co-organizers of the symposium, we ourselves feel that we greatly benefited in our project from a parallel element of diversity, which, while we hope in both of our cases reasonably broad, allowed William Wagner perhaps to bring a special availability to test and strengthen ethical argument relating to the dignity of human life, in keeping with the original interests that led him to propose organizing the event, and Ursula Weide, perhaps to contribute more of a special appreciation for the conditions necessary, in the first instance, to advance the cause of science, and, as well, for the most effective therapeutic applications of contemporary scientific research in keeping with her own scholarly background leading Professor Wagner to ask her to join him as his co-organizer. We join now in saying that we hope that, just as we found our own collaboration worthwhile and enjoyable, the proceedings that follow will be found interesting, enlightening and worthwhile both by those who tend to share the conclusions of the authors published, and for those who, on all points, do not.

The other element contributing to excitement of Colloquium itself but which does not appear in the proceedings is the intensive conversation it made possible about law and policy in bioethics and about German-American comparative law. Because this portion of the Colloquium relied heavily on panel presentations and because, where it extended to plenary addresses, these addresses fanned out over far-ranging topics, it became too unwieldy for inclusion in the printed version of the proceedings. We, therefore, urge readers with interests in these areas to view these portions of the archived video of the conference found at the web address set out above. We also wish to extend our thanks to German legislators Maria Böhmer and Hubert Hüppe and American Sam Brownback and Dave Weldon who shared the benefit of their insights with us at the Colloquium, as well as all of the scholars and policy experts who did the same.

As the readers of the now turn to the essays that follow, we hope that these essays provide an opportunity for their attaining a fuller readiness to contribute to the vital public conversation now occurring on the proper human and ethical limits of contemporary research in the biological sciences.