31 Extracorporeal Embryonic Development: Juridical Views

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Although embryonic development covers a very short period (12 weeks), its situation at the beginning of life, between political, social, and religious influences, and the explosion of reproduction techniques in the last decade place this subject in a position which is continuously changing. Central to the current controversy about early human embryo research is the question of when the embryo acquires moral (and juridical) status. This debate was initially opened in relation to laws concerning abortion in different countries. However, compared to the embryo in utero, the extracorporeal status has a specific vulnerability that needs increased juridical protection.

Most developed countries are currently highlighting the very early stages of embryo development in reports and/or laws concerning the use of human prenates in human artificial procreation and research. In countries where these laws exist (UK, Spain), the time of development of the primitive streak is considered as the limit for research (i.e., 14 days after fertilization or the so-called preembryonic developmental period) [3]. In contrast, the only laws regarding the moral and juridical status of the embryo up to 12 weeks of gestation is concerned with abortion, and extrapolation on an extracorporeal embryo is very difficult.

Juridical Uncertainties as a Result of Difficulties in Definition

There is no legal status for an embryo in most countries, even if it is suggested that it is a person or even a potential person. A distinction should be made between the legal personhood beginning at birth and the ethical problem of the status of an embryo (based on fundamental questions which are influenced by political and philosophical considerations). The extracorporeal situation confounds the problem even more as there is a suggestion that embryo could be a “property.” The biological parents have no commercial rights in most countries other than the “power of life or death” within precise limits: they have no right to sell or purchase, but they do have the right to decide whether or not to cryoconservation, donate, or transfer the embryo (Art. L.670 of the Braibant Project in France; the same also applies in Spain). The French report (Braibant Project) specifies that
donation is not understood from a juridical point of view (i.e., from the patrimonial aspect), but in its usual sense so that the notion of “ownership” is eliminated.

In all existing laws or reports (in the United Kingdom, Sweden, Norway, Victoria State in Australia, Art. L.671 of the Braibant Project in France), in vitro fertilization is reserved for the treatment of human infertility. In a few countries (Spain, Southern Australia, Germany, and in France as the Braibant Project is not yet a law) it can also be used to treat or prevent genetic or hereditary disease. Paradoxically, the deliberate destroying of surplus embryos within the 14-day limit is not a criminal act of abortion in all countries which accept in vitro fertilization, provided that the other embryos were used to cure the infertility of the “owner.” For example, in Southern Australia State (see Appendix), this right can be re-examined by the “owner” every year. The attitudes in different countries depend on the way the extracorporeal embryo is considered, and, except for the United Kingdom, these debates are reserved for the embryo obtained by in vitro fertilization, with no possibility to use an embryo obtained by lavage in most countries.

In all countries (except Ireland and Liechtenstein), as soon as in vitro fertilization is accepted, the rights of the embryo rely on its moral status under the influence of political and religious considerations. These considerations include: (a) the protection of the embryo as a human being from the time of fertilization; (b) the denial of any moral status to the pre-embryonic stage (i.e., 14 days after fertilization); and (c) the personification at birth when an independent life and human relationships are possible.

**Does Human Personality Begin with Fertilization?**

In Louisiana State (USA), “any person who intentionally causes the fertilization of a human ovum by human sperm outside the body shall, with regard to the human being thereby produced, be deemed to have the care and custody of a child . . .” (Act No. 964, July 14, 1986, State of Louisiana, Regular Session, p. 1744). However, few countries agree with this opinion, and the majority do not grant legal status to the human embryo in vitro (i.e., during the 14 days after fertilization). Thus, even in the absence of legal rights, there is no denying that the embryo constitutes the beginning of human life, “a member of the human family” [4]. Therefore, whatever the attitude, every country has to examine which practices are compatible with the respect of that dignity and the security of human genetic material.

**And Just What Is a Pre-embryo?**

The definition of a pre-embryo is difficult [2, 3]. For its defendants (UK, USA), it is the period at the end of which one can be sure that there will be