

COMPLICITY AND STEM CELL RESEARCH: COUNTERING THE UTILITARIAN ARGUMENT

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*Once the principle of universal human rights and dignity is broken, the weak will always risk suffering at the hands of the powerful. It is a situation that we all should want to avoid.*¹

Introduction

The value placed on human life in all its stages of development constitutes a central aspect of a culture's moral thinking. When the 1973 U.S. Supreme Court decision in *Roe v. Wade* granted the right to unrestricted legal abortion to all American women, it established a dubious "right of privacy" as more fundamental than the intrinsic presumption of fetal personhood, as defined by the Fourteenth Amendment of the US Constitution. Today the debate over human embryonic stem cell research may set moral and legal precedents that will plow deep furrows in our nation's conscience, far more than *Roe*. The discussion has been heated and divisive because of the serious scientific, ethical, philosophical, and theological issues involved.

A neglected element in the current debate is that of *moral complicity*. If we assume the personhood of the embryo, and that killing an embryonic human being is a moral evil, then those who provide reason, circumstance, and means for the act share complicity with that evil. This paper will examine and critique a utilitarian argument that seeks to justify such complicity.

Background

Human embryonic stem cells (hES cells), derived from frozen embryos "left over" from *in vitro* fertilization (IVF) procedures, have the promise of curing a variety of human ailments. Because hES cells can act as "starter" cells to grow new nerve tissue, heart muscle tissue, or glandular tissue, many scientists are excited about potential treatments or even cures for heart disease, strokes, Parkinson's disease, diabetes, and many other disabling conditions. Yet producing hES cells requires the destruction of the embryos that contain them, entities that many pro-life Christians hold to be human persons with rights.

Current U.S. policy permits private companies to engage in hES cell research, but prohibits federal funding (e.g., through the National Institutes of Health), except for a limited number of stem cell lines from embryos that had already been destroyed.² At issue are two major themes. First is the sanctity of human life. Many object to the destruction of embryos to obtain hES cells, since they believe that embryos are human persons, and thus have basic human rights.³⁻⁹

The second theme is the utilitarian rationale for the use of such embryos, since “they are going to be destroyed anyway.”

The utilitarian argument has not received as much attention as the first, yet is an important key to justify hES research. If one assumes that frozen embryos are going to be discarded anyway, why not utilize them for research? Even if one is distressed by the destruction of an embryo, isn't it better if some good can come from it? The utilitarian argument seems to make some sense, and deserves a thoughtful response.

Notice that no one makes this argument unless, at least for the moment, he assumes that embryos are persons. In other words, why bother to justify a destructive action towards mere biological tissue? The utilitarian argument is based on the idea that one can assume embryos to be persons and still destroy them. Yet there are two questionable assumptions inherent in this approach: 1) eventual destruction of embryos is inevitable, and 2) those that benefit from embryo destruction are not complicit in that morally evil act.

Ethical Assumption #1: The Inevitability of Embryo Destruction

The first questionable assumption is that embryos are destined for destruction. However, just because embryo destruction is a possibility does not make it a certainty. In fact, there are at least five possible outcomes for unused frozen embryos. First of all, embryos may simply be implanted in the wombs of those who provided gametes for their creation. In fact, Christian physicians who affirm the conception view of human personhood often recommend that *only* those embryos that will eventually be implanted be created in the first place,¹⁰ obviating the problem of “leftover embryos” that has led to the present debate.

Another alternative is to release frozen embryos for implantation into another womb. Such “embryo adoption” can provide childless couples the joy of having a baby, while at the same time acting on behalf of another.¹¹ Bevington is more to the point: “[Embryo adoption] will prevent a pre-born human being from being subjected to destruction at the hands of fertility clinicians or medical researchers.”¹² Embryo adoption is readily available to those who wish to pursue this idea, and the success rate for achieving pregnancy and carrying a child to term is similar to that of routine IVF.¹³ The Snowflakes Embryo Adoption Program is the best-known non-profit organization,¹⁴ but some commercial centers offer this service as well. The federal government has even earmarked nearly \$1 million to promote this idea,¹⁵ with \$500,000 of the grant going to Snowflakes.¹⁶

From a legal perspective, embryos are property, whose disposition is the sole prerogative of the “owners.” Yet the law has been ambiguous, often claiming that embryos are “irreplaceable” and “unique.”¹⁷ The conflicting and arbitrary state of current law regarding IVF and the embryos derived from it has been discussed recently by Capron.¹⁸ Of course any legal claim is specious if a prior claim of moral personhood can be established (cp. abortion, which would be morally wrong though legal).

So, setting the procreative options aside for the moment, the third option would be to leave frozen embryos in their current state of physical, moral, and legal limbo, with the parents / owners unwilling or unable to decide their fate. Of course, this sort of non-decision may lead eventually to the destruction of the embryos, but the limit of long-term storage of frozen embryos is not yet known.

The fourth choice, then, is to request that frozen embryos be destroyed. By far, this is the most common outcome for unused frozen embryos, *by explicit decision of the parents / owners*. In a recent survey of 1246 couples who had decided to no longer try for a pregnancy themselves, the great majority (89.5%) requested that their frozen embryos be destroyed, even though other options were available.¹⁹ Another survey of over 3800 couples revealed that 9.1% would be willing to donate their embryos to another couple for adoption,²⁰ while a separate study of 509 couples revealed that about 10% would consider donating their embryos for stem-cell research.²¹

The fifth option, donating embryos for stem cell research, is therefore not the most common choice, and almost as many couples are willing to give them up for adoption. All five of these options are available for the couples who have legal control over them. Even though most might wish to have them destroyed, this is a conscious choice, and therefore *not inevitable*. Subtle factors related to clinician and fertility center biases have an enormous influence over the final outcome. If more centers actively supported and enthusiastically promoted the idea of embryo adoption, then this would surely be a much more frequent outcome. With this in mind, “inevitable destruction” becomes no more than a moral smokescreen for a utilitarian agenda.

Ethical Assumption #2: Moral Complicity

So if killing embryos is a moral evil, who participates? Does the moral blame reside merely with the laboratory technician who flushes the cryogenic canister down the drain, or does responsibility for the act include the physician or fertility center director who authorized this? What is the role of the owners of the embryos? Whether or not they are the biological parents, they have the legal power to make decisions about their fate. Should they be morally culpable as well? One may rightly ask, “Who benefits from the death of this embryo, and should that person bear some of the moral responsibility as an agent of its destruction?” This introduces the idea of *moral complicity*.

Moral complicity refers to the possible taint of moral guilt attached to a person by association with a moral wrong. For an example from law, an accomplice or accessory to a crime is just as culpable as the person who actually performs the deed.²² Speaking from a moral perspective, complicity requires that a person have some association with the act committed, even if she does not perform the deed herself.

As an example of the argument from complicity, consider the use of fetal tissue to develop and obtain vaccines for widespread use. Such was the case with the rubella vaccine, a live (though attenuated) virus developed in tissue

culture from aborted fetuses.²³ A number of other commonly-used vaccines have had a similar source, including Poliovax for polio, Havrix for hepatitis A, and Varivax for chickenpox.²⁴

Alternative sources are available for all but three of ten commonly-administered vaccines currently in use.²⁵ Many would make a strong case against using vaccines derived from aborted tissue, because of the idea of complicity with the original unethical act:

“Immediate material cooperation” is complicity in an action which one does not formally approve, but in which one is so closely involved that one shares its evil. The [vaccine] cell-line researchers were almost certainly immediate material cooperators. Pharmaceutical researchers made no effort to avoid the morally problematic cell line, and thereby spread the effect of the abortionists’ evil intent.²⁶

Vaccine users (physicians and their patients) are further removed from the original act, however. Even though some writers claim that physicians should not use them (as above), there seems to be a sense that the passage of time reduces complicity to a morally repugnant act.²⁷

But the passage of time does not always help to “morally sterilize” an act. Consider the story of Eduard Pernkopf, a distinguished professor of anatomy who published his *Atlas of Topographical and Applied Human Anatomy* between the years 1933 and 1960. This is a four-volume masterpiece of 800 detailed watercolor paintings of human anatomy, used extensively by European medical schools in the latter part of the twentieth century. In February of 1997, the University of Vienna began an extensive investigation into the subjects used to produce the *Atlas*. Their conclusion: 1,377 persons put to death during the Nazi era had been delivered to the Institute of Anatomy, and very likely some of these victims were portrayed in the *Atlas*. Indeed, many of the artists were members of the Nazi Party, and Pernkopf himself was a fascist and a Nazi sympathizer. The *Atlas of Topographical and Applied Human Anatomy* has now disappeared from the libraries of many medical schools because of the moral taint associated with its production. (For a useful summary of the *Pernkopf Atlas* issue, see Seidelman.²⁸)

It seems curious that moral complicity appears to be assuaged by time in the vaccine case, whereas the passage of time does not help in the *Pernkopf Atlas* case. What determines the difference? Whatever it is, the reader should at least understand that moral complicity is multifactorial. (For an in-depth discussion of moral complicity from theological and scriptural perspectives, see Pura.²⁹)

Applying the concept of complicity to embryonic stem cell research, it appears that all parties—researchers, technicians, donor parents, and experimental subjects—are associated in some way with the destruction of the embryos, and therefore complicit in the original immoral act. At least in the case of certain parties, such as researchers and treatment subjects, this association also entails benefit, strengthening the sense of complicity. This should be seen as a powerful argument against hES research under any circumstances.

A Moral Analogy

The following moral analogy should help to amplify these criticisms of hES research. The reader should assume, for the sake of the argument, that the sanctity argument is true, i.e., that human personhood begins at the moment of conception. Also, please assume that complex legal matters can be resolved.

1. A six year-old girl is in a major car accident, and declared brain dead. Her loving parents anguish over the decision, but reluctantly agree to donate her liver. Your son, who has a rare liver disease, is the fortunate recipient. You are clearly morally justified in accepting the donated liver for your son.
2. Let us change the *agent* of the little girl's death. A drunk driver caused the accident. Even worse, that driver was the girl's father. But you are not morally responsible for the circumstances that led to the girl's death, and are still morally justified in accepting the donated liver for your son (this of course ignores the thorny issues of informed consent on the part of the donor's parents).
3. Let us change the *manner* of the little girl's death. The father, instead of being a drunk driver, is insane. He uses a handgun to shoot his daughter in the head. You are still not morally responsible for the circumstances that led to the girl's death, and could justify accepting the donated liver.
4. Let us change the *agent* of the little girl's death once more. You know that the girl's father is violently disposed towards his daughter, and that he plans to kill her. You reason, "He will kill her anyway, so my son may as well benefit from the girl's liver." You take a gun and kill the girl yourself. Now you are *clearly* on the other side of the moral fence. No reasonable person would argue that you are morally justified in doing this, even if, for some reason, the death of the little girl at the hands of her father is inevitable.
5. Let us change the *circumstances* of the little girl's death in another way. You decide not to kill the girl yourself. However, you pay the father \$10,000 to pull the trigger, so that your son may benefit. No reasonable person would argue that you are morally justified in doing this, even though you did not commit the act yourself. You are just as morally culpable.
6. Let us change the *moral contract* between you and the father. No money changes hands. However, you plead with the father to kill his daughter, saying "Your daughter's liver is my son's only hope." Of course, you do nothing to prevent her death. No reasonable person would argue that you are morally justified in doing this (from a legal perspective, this would be conspiracy to commit murder).
7. Finally, let us now simply change the *age* of the little girl who dies to provide your son with a liver. Now she is no longer six years

old. In fact, she is an embryo. Her father is willing to destroy her to provide stem cells to treat your son's liver disease. You are just as morally culpable (i.e., you are morally complicit in the evil) as the father if you accept this offer.

Note that the premises and the conclusions drawn follow directly from each other *if the sanctity argument is granted*. The analogy relies on commonsense ideas of a shared moral culpability, to reach the conclusion that there is *never* a justification to destroy embryos to benefit others, no matter what their supposed inevitable fate.

Some would claim that this analogy is unfair, in that embryo donors and stem cell recipients would never know each other personally. On this view, a moral distance also exists between the fertility clinics and the researchers that created the embryos through IVF. Yet each would *benefit* from the relationship, however tenuous and anonymous. Since a physical benefit may accrue to patients receiving hES treatments, and since academic or monetary benefits would accrue to those engaged in the research, it seems disingenuous to assert in either case that "a sort of moral autoclave will sterilize the tissue ethically so that it can be used without contamination by association with its method of supply."³⁰ It is this mutual benefit from an evil act wherein moral complicity lies.

Throughout this analysis we have made the assumption that the act of destroying embryos is a moral evil, because embryos are in fact human persons. Such an assumption is reasonable in order to examine the utilitarian argument for their destruction, *viz.* "they are going to be destroyed anyway." As pointed out earlier, personhood is implicit in making such a statement.

The analogy also makes one thing clear: this situation is *not* identical to that of using vaccines derived from abortions in the distant past. No passage of time can morally sterilize the act of embryo destruction, and thereby release the beneficiaries from complicity, because embryos are destroyed *for the purpose of* medical research or treatment. This immediacy in the use of stem cells from destroyed embryos should make the complicity of all parties easier to discern.

Conclusion

In the thirty-plus years since *Roe v. Wade*, utilitarianism has become a dominant ethical rationale, even among some conservative thinkers who honor the sanctity of human life from conception. This article has examined some of the hidden issues in the utilitarian argument, and has presented a moral analogy to clarify the idea of complicity. As utilitarian arguments gain ascendancy over Christian ethics in our society, a decline in the value of human life will surely occur. Respect for life demands foregoing practices that diminish human dignity and worth. Otherwise, human beings may lose sight of their identity as persons, made in the image of a loving Creator.

The authors would like to express their appreciation to Fr. Wayne McNamara (Dayton, Ohio) for valuable suggestions in the preparation of this paper.

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