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COMMENT

The 14-day rule for human embryonic research in the UK

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Human embryos can be developed in the laboratory up to 13 days after they were created, recent research has shown (1, 2, and see BioNews 851). This finding has led some commentators to question whether it may be useful to go beyond the 14-day limit for embryonic research in the UK in order to better understand the reasons behind certain forms of miscarriage and infertility or to develop improved embryonic stem cell lines (3, and see BioNews 850).

The 14-day rule was first suggested in the UK in 1984 by the Warnock Report and was then enacted in the UK's Human Fertilisation and Embryology Act 1990. This limit was chosen for a number of reasons including that 14 days is about the stage at which three primitive embryonic layers are formed in the embryo, each one having its own distinct function. It is also believed to be the point at which an embryo can no longer split to form identical twins.

A further reason for this limit was that, when the Warnock Report and the subsequent UK legislation were prepared, the human embryo was not considered to be just a pile of cells. Instead it was assumed to have a certain degree of value and worth reflecting what was suggested to be its 'special status', meaning that some kind of respect could be given.

With the passing of the years, however, this concept of a special moral status of the early embryo has all but been abandoned. Indeed, without any clear definition, the concept was unintelligible, meaningless and bound to be discarded.

In December 2002, Baroness Warnock, admitted that 'I regret that in the original report that led up to the 1990 legislation we used words such as "respect for the embryo" [...] I think that what we meant by the rather foolish expression 'respect' was that the early embryo should never be used frivolously for research purposes,' adding, 'you cannot respectfully pour something down the sink - which is the fate of the embryo after it has been used for research, or if is not going to be used for research or for anything else' (4).

It is difficult to disagree with Baroness Warnock's logic here, since one is challenged to understand any rational basis for the special status.

The UK ethicist, Professor David Jones, in his 2011 article 'The "Special Status" of the Human Embryo in the United Kingdom' explained that rather than engaging with questions of when life or personhood begins, the Warnock Report sought, instead, to go 'straight to the question of how it is right to treat the human embryo' (5).

This means that the Report never tried to be rational or coherent when trying to understand why an entity should or should not be respected. It seems to have misunderstood that the treatment of a being is very much dependent on how it is considered.

As Jones again explains: 'Warnock's approach thus utterly fails as a convincing account of what it is to respect the moral status of the embryo. Indeed, such an account fails not only to respect the embryo but even to respect the moral feelings of those who respect the embryo.' He then concludes that the way in which the concept of special status is used in the UK debate 'has no inherent content but functions as a mechanism to manage public concerns, so that the issue of the inherent status of the embryo has not been resolved so much as "by-passed"'.

This all points to the fact that one of the main ethical constructions of the Human Fertilisation and Embryology Act 1990 was built on irrational foundations. As a result, it is only to be expected that many should now question the relevance and utility of the special status of the early human embryo, making it also difficult to understand why the 14-day rule should remain.

But the situation would not improve if this 14-day limit was just extended to another later stage. The same challenges with respect to the rationality of the limit would remain. The UK cannot just continue to prohibit what is useless and legalise what becomes useful in embryonic research without any in-depth ethical consideration. Such an approach, based on pragmatism, would be just as irrational and meaningless as the concept of the special status of the human embryo.

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