

lifeissues.net:clear thinking about crucial issues

L'Osservatore Romano English edn, 29 May 1996, p.12

The Question of Frozen Embryos

Maurizio P. Faggioni, O.F.M.

Reprint with permission

SINCE THEIR INTRODUCTION, MODERN TECHNIQUES OF ARTIFICIAL FERTILIZATION HAVE presented a range of difficult moral questions, among which, emerging with exceptional urgency, are those connected with the cryopreservation of human embryos. The situation has become so serious and intolerable as to give rise to an emphatic appeal by the Holy Father on 24 May 1996 that the production and freezing of human embryos be halted (*L'Osservatore Romano* English edn, 29 May 1996, p. 12).

A Logic of Death

Human embryos, conceived *in vitro* and in numbers exceeding the possibility of simultaneous transfer into the mother's body (so-called "surplus" embryos), are frozen to allow for possible repetition of the *embryo transfer* in the not infrequent case of failure on the first attempt or in those cases where it is postponed. At other times, embryos are frozen in order to be transferred into a surrogate mother who carries the pregnancy to term for another couple, or to give sufficient time for genetic examination of some of the embryonic cells for the purpose of transferring only *high quality* embryos through the elimination of those found defective, or lastly in order to store valuable living cells for experimental use or other instrumental purposes.

Techniques of cryopreservation were refined in the early 1970's in experiments with animal cells and only in the next decade applied to human embryos: up to then, embryos which were not transferred had been destroyed or used for research. These techniques, however, are still very risky for the integrity and survival of the embryo, the majority of whom die or suffer irreparable damage in the process of freezing or subsequent thawing. Besides these immediate effects, recent studies on animal subjects indicate significant behavioural and morphofunctional variation in adults originating from frozen embryos.

Notwithstanding such disturbing biomedical data, most existing legislation in this area places no limit on the number of embryos which may be produced for *in vitro* fertilization; therefore, the most common situation is to have a "surplus" of embryos, whose subsequent cryopreservation is generally permitted for future transfer into the genetic mother, but at times also permitted for purposes of donation or experimentation. In Great Britain, for example, not only is it permitted to conduct research and experimentation on the "surplus" embryos originating from attempts at artificial procreation, but it is also possible to produce and store human embryos for purely scientific purposes.

In contrast, German legislation, which is one of the most rigorous and coherent in defence of the embryo, prohibits the extraction of more oocytes than necessary as well as the fertilization of more than three egg cells at a time. All the fertilized oocytes must then be transferred into the genetic mother in order to avoid a "surplus" of embryos; cryopreservation of embryos is permitted only when it is absolutely necessary to delay transfer into the mother.

The most disturbing aspect of the problem is that of the fate of the embryos. In fact, laws that permit cryopreservation of embryos, in order to avoid the intricate legal questions which might arise regarding the existence of frozen offspring and unsure about the effects of freezing, usually indicate a maximum time-span for cryopreservation, which varies from country to country, of one to five years. This means that every year from now on, tens of thousands of "unused" embryos will be killed -- tens of thousands of innocent lives will be cut short by law. This is a prenatal massacre, a killing not merely tolerated, but planned and ordered by the legislature thus transformed, like Pharaoh of old, into an instrument of a perverse logic of violence and death.

Rights of the Embryo

The crucial ethical and legal issue is the recognition of the human quality of the embryo and the conviction that "the fruit of human generation from the first moment of its existence, that is to say, from the moment the zygote has formed, demands the unconditional respect that is morally due to the human being in his bodily and spiritual totality." (*Donum vitae*, I, 1).

The current practice is based instead upon a refusal to classify the embryo, above all at the earliest stages of its development, as a human being, a denial underscored by the ambiguous notion of the *pre-embryo*. This concept, proposed in 1986 by the noted embryologist A. McLaren and received triumphantly in the parascientific world, is now making progress as well in the world of medicine. The use of the notion of the *pre-embryo* is ideological and tendentious; it seems intended to justify a *posteriori* these manipulative practices out of a desire not to discontinue their use.

From our point of view, however, the authentic humanity of the embryo must be recognized, even if the full unfolding of its personality is not yet seen. For this reason, the use of artificial techniques to bring a pregnancy to term does not justify the production of an excessive number of embryos, nor their reduction by abortion when the number implanted is too large, nor eugenic preselection, nor the freezing of embryos.

The proponents of cryopreservation say that freezing saves *fresh* embryos from destruction which are not able to be transferred because of intervening difficulties or because of their surplus number; but this "rescue" would be authentically such only if every embryo were guaranteed the possibility of subsequently resuming the process of differentiation and development leading to maturity and birth. Unfortunately, the *limbo* of suspended animation into which freezing condemns them often turns out to be the antechamber of death. The claimed harmlessness of the freezing process is refuted, as was seen, by the clinical reality itself. This evaluation is not changed by the assertion that the loss of embryos is a temporary problem, connected with present imperfections in the technology, but which will improve with time: we cannot employ experimental techniques on human subjects before they have been perfected with animals and therefore we cannot licitly create a *surplus* of embryos which we do not know how to store with a sufficient margin of safety.

Lastly, prescinding from the hazards of this procedure for the integrity and survival of the embryo, the freezing of human embryos constitutes in itself an offence against the dignity of the human creature and of the right of the embryo to develop in keeping with its immanent teleology, to proceed autonomously in accord with its own finality. Freezing obstructs the *becoming* of this existence and could be justified solely (and here we find ourselves in the realm of the hypothetical) were it the only way to protect the existence of a life at its very beginning which has been endangered by some accidental factor -- not placed in danger directly by our reckless manipulations. The slaughter of the

innocent as a consequence of certain procedures (in particular, *in vitro* fertilization and the freezing of embryos) cannot be the price to pay for bringing others to birth, save in a teleologically utilitarian perspective which privileges the attainment of an end above all else and which, according to the unacceptable notion of gradation in the value of human lives, ascribes no value to the immature embryo or a value less than that of a fetus at term.

In the light of these reflections, the condemnation of the practice of storing living embryos by cryopreservation, as found in the Instruction *Donum vitae* remains both current and striking: "even when carried out in order to preserve the life of an embryo -- cryopreservation -- constitutes an offence against the respect due to human beings by exposing them to grave risks of death or harm to their physical integrity and depriving them, at least temporarily, of maternal shelter and gestation, thus placing them in a situation in which further offences and manipulation are possible" (*Donum vitae*, 1, 6).

In the above-mentioned appeal, the Holy Father, after recalling to scientists their grave responsibilities in this area, addresses jurists and government leaders: "I also call on all jurists to work so that States and international institutions will legally recognize the natural rights of the very origin of human life and will likewise defend the inalienable rights which these thousands of 'frozen' embryos have intrinsically acquired from the moment of fertilization. Government leaders themselves cannot shirk this duty, if the value of democracy, which is rooted in recognizing the inviolable rights of every human individual, is to be safeguarded at its very origins".

What is to be Done with the Frozen Embryos?

The manipulation of human embryos as well as the aberrant legislation permitting it are part of the distorted mentality which presides over many practices of artificial reproduction, in particular, *in vitro* fertilization. Such procedures, by violating the unbreakable connection between the expression of the incarnate love of the spouses and the transmission of life, obscure the profound meaning of human reproduction. Therefore it is not licit to produce embryos *in vitro* and even less to intentionally produce a surplus, thus making necessary their cryopreservation. This seems to be the only reasonable response to the question of the freezing of embryos and it is in this sense that the Holy Father has appealed to scientists. However, the unnatural way in which these embryos have been conceived and the unnatural conditions in which they currently exist cannot allow us to forget that these are created human beings, living gifts of the Divine Goodness, created in the image of the Son of God himself. One wonders then how to intervene to save these created beings and thus resolve a regrettable dilemma in an ethically acceptable way.

Certainly, in those cases where embryos have been conceived *in vitro*, there is the obligation to transfer them into the mother; only if it is impossible to do so immediately would one be able to freeze them, but with the intention of transferring them into the mother's womb as soon as the necessary conditions are present. The womb of the mother is the only *place* worthy of the person, where the embryo can have some hope of surviving by spontaneously resuming the process of development artificially interrupted. Those who believe - in contrast with Catholic morality - that it is right to have recourse to extra-corporal methods of fertilization, cannot exempt themselves from respect for the *ethical minimum* of the protection of innocent human life. Nor can a husband, in the case of divorce, oppose the mother's request to receive an already conceived embryo, because once human life has begun no parent has the right to oppose its existence and development. The embryo indeed does not derive its right to existence from a reception that has been agreed upon by its parents, nor by its acceptance by the mother, nor by its recognition in law, but by its condition of being

human. It cannot be overlooked, on the other hand, that in the case of a deferred pregnancy, the meaning of procreation in its complex anthropological dynamics is further deformed and distorted: the artificial separation between sexual union (when there is such) and conception, already radical and unacceptable in techniques of extracorporal fertilization, is taken to an extreme in cases of the implantation of cryopreserved embryos.

If the mother of an embryo cannot be located or should she refuse the transfer, certain authors, among whom are some Catholics, have considered the possibility of transferring the embryos into another woman. This would be a case of "prenatal adoption" to be distinguished from surrogate motherhood and heterologous fertilization with a donor oocyte. In this case there would be no offence to matrimonial unity, nor to the equilibrium of familial relationships, because the embryo would have, from the genetic standpoint, the same relationship to both adoptive parents. The stronger and more profound bonding which would occur between a child adopted before birth and his adoptive parents ought to lessen the psychological difficulties which at times are seen in traditional adoptions. Moreover, such a solution would highlight the significance of adoption as an expression of the fecundity of marital love and as fruit of a generous openness to life which leads spouses to welcome into their family children whose parents have died or who have been abandoned (*Familiaris consortio*, nn. 14, 41; *Evangelium vitae*, n. 93), above all in those cases where it is a question of children abandoned because of disabilities or illnesses (*Evangelium vitae*, n. 63).

This solution, suggested as an *extreme ratio* to save embryos abandoned to certain death, has the merit of taking seriously the value of the embryo's life, found in such jeopardy, and of courageously accepting the challenge of cryopreservation. It seeks to check the evil effects of a disordered situation; however, the disordered situation itself within which ethical reason must enter to function in this case profoundly colors the attempts at a solution. In fact, there are serious questions which cannot be concealed: in the first place, the fear that such a singular adoption might not be able to avoid the dehumanizing criteria of efficiency which govern the technology of artificial reproduction. Is it possible to exclude all forms of selection? Is it possible to avoid the situation in which embryos are produced in order to be adopted? Is it possible to foresee a transparent relationship between those centres which illicitly produce embryos and those in which they are licitly transferred into adoptive mothers? Do we not run the risk of legitimizing and even promoting, unwittingly and paradoxically, a new form of objectification and manipulation of human embryos, and more generally, of the human person?

In the case of frozen embryos we have a powerful example of the inextricable labyrinths into which scientific knowledge imprisons itself when it is placed at the service of individual interests rather than the authentic good of humanity, at the service of desire only and not reason. Faced with the gravity of these questions, questions of life and death, Christians sense more than ever the mission entrusted to them by the Lord to proclaim the *Gospel of Life*, and so they are committed, together with all persons of goodwill, to respond with solutions to the emerging problems which, if necessary, will be daring, but which will always respect the value of the human person and his inherent rights, above all when it is a question of the rights of the weakest and the least. [*L'Osservatore Romano*, 21 August 1996.]