Moral Thinking and Government Policy: The Warnock Committee on Human Embryology

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THE COMMITTEE OF INQUIRY, SET UP BY THE BRITISH Government in 1982 as a result of growing public concern about new techniques for the treatment of infertility, and new, related areas of research, was given very precise, and in some ways restricted, terms of reference. We were charged with the task of studying "recent and potential developments in medicine and science related to human fertilisation and embryology," and in addition we had "to consider what policies and safeguards should be applied, including consideration of the social, ethical and legal implications of these developments, and to make recommendations."

These terms of reference, broad though in some ways they were, may be seen as restricted in that we were not charged with the task of considering the whole range of questions relating to the treatment of the unborn child. We were not obliged to consider (indeed, we were obliged *not* to consider) questions concerned with abortion, or with the abortion laws as they stand at present in the United Kingdom. Where our recommendations seemed to conflict with current abortion law, it was not strictly our business to point this out (though at one place in our report we did so, in a footnote). It is, and was seen by us to be, the task of Government to determine, in considering legislation,

Milbank Memorial Fund Quarterly/*Health and Society*, Vol. 63, No. 3, 1985

whether or not new legislation is in conformity or in conflict with old.

It is necessary to make this somewhat bureaucratic point at the beginning, to forestall questions like "Why didn't you consider abortion?" or "How do your recommendations bear on the laws about abortion?" The boring answer to such questions is that, as a committee, we did not consider the matter, and would have been wasting the very short time that we had, if we had done so.

As it was, the terms of reference gave us plenty of work to be going on with. In the first place, we had to make recommendations to Ministers; and that meant that we had to think in terms of future legislation. It is a cliché that politics is the art of the possible; but it is in trying to formulate recommendations on behalf of such committees as ours that the truth of the cliché becomes apparent. It is no good making recommendations for legislation which could never in any conceivable circumstances be carried through Parliament, nor recommendations which, if eventually they became law, would be unenforceable. As soon as a committee (or more generally its chairman) begins to think in terms of what would be realistic as a proposal to turn into law, it becomes clear that the relation between morality and the law is not simple. Still less is it easy to say what is the relation between very strongly held but not universally shared moral views and legislation, which must be binding on everyone whatever their views.

And so all the deliberations of the Committee were restricted, though not always explicitly, by a kind of pragmatic framework. At no time could we allow ourselves to indulge in idealism (and this was something that some members of the Committee found it quite hard to accept). Yet, on the other hand, our recommendations could not be too overtly practical or pragmatic. They had also, as far as possible, to be acceptable to society as a whole, and a society increasingly conscious of the moral dilemmas involved. It was for this reason that we called for, and paid serious attention to, evidence from a number of different organizations and individuals, and this evidence came in in great quantity.

There was no one on the Committee who doubted that we were concerned with moral questions, in some profound and inescapable sense of the term (though at the beginning some members, especially those who were also members of the medical profession, were very

dubious about expressing *moral* opinions, wishing to confine themselves to something they thought of as rather different, namely professional ethics). These questions fall into two distinguishable, though overlapping kinds: the first kind centers on the concept of the family; the second on the justification, or lack of it, for research using human embryos. My personal belief was, and is, that the second set of questions is both more important and more difficult than the first. But both caused us trouble, and had about equal time devoted to them.

Since we were all agreed that we were dealing with matters of morality, and since we were obliged to make recommendations that might result in legislation, it was obvious that we had to enter that well-known philosophical and jurisprudential minefield, the theoretical relation between morality and the law. But this relation is different in the two different types of questions we had to answer, or so it seemed to us. I will consider first those questions which, broadly speaking, are concerned with the setting up of a family.

Questions about the Family

In the Report, we attempted to distinguish questions concerned with the treatment of infertility from those concerned with research. But it soon became clear, for reasons that I shall hope to show, that infertility treatment cannot be considered separately from wider questions about the family.

The Committee agreed without much difficulty that infertility is a condition that merits treatment, though it is on the whole neglected, especially within publicly funded medicine. Without attempting to draw up a list of priorities for Regional Health Authorities (responsible for hospitals in the National Health Service), we nevertheless recommended that more consideration should be given to the provision of infertility services, at the moment patchy, insensitive and often involving couples in long and harassing delays. Such a change need not necessarily be very expensive, but must entail that the condition of fertility is taken seriously. There is good practice in places, but it should be more widely and more evenly spread.

We found no moral problems at all in those methods of treatment, such as artificial insemination by husband, and *in vitro* fertilization, where the wife's egg is fertilized with the husband's semen, in which

only the infertile couple were involved. Such treatments, considered in themselves, seemed wholly beneficial. The general public, and members of the Committee, began to have moral hesitations when participation of a third party, not one of the infertile couple, is involved in the remedy for infertility, as is the case with artificial insemination by donor (AID), egg donation, and surrogacy of the form most usually considered where the mother who carries the child is its genetic mother. (Members of the Committee also had moral objections to the other kind of surrogacy, or "womb-leasing," where after *in vitro* fertilization an embryo is implanted in the uterus of a woman not genetically related to it; but I shall not discuss this form of surrogacy separately here.) Some people are prepared to argue that such remedies for infertility are intrinsically wrong, since the family ought to consist of mother, father, and the genetically related children, and that deliberate deviation from this pattern is contrary to the moral law. Such arguments would make AID and surrogacy into forms of adultery. But even short of so extreme a view, many people feel doubts about the status of the child in such "artificial" families, within which the relation of parents to child is asymetrical, and where the child is often brought up deceived about his true origins. His position is bound to be ambiguous, both emotionally and legally. So it is argued.

More important, it is at this stage that infertility ceases to be the sole, or even the central theme. For those who may wish to use AID or surrogacy are quite likely not to be infertile, but choose to use these methods of having children in preference to more orthodox means. There is an increasing demand from homosexuals, especially women, but men as well, that they should be enabled, as of right, to establish families. What view is society to take of these demands?

Many people regard with outrage and horror the prospect of children brought up with lesbian women or homosexual men as their parents. There is a strong and widely expressed feeling that the orthodox family, where the parents are a heterosexual couple, is not only natural but right. Even if the concept of the family is to be extended to include the "artificial" families discussed above, even if in practice families often include stepchildren, or children born as a result of extramarital affairs, even if there is an increasing acceptance of one-parent families, still it is held that the family centered on the heterosexual couple is the ideal. The reasons given to support these strong feelings

vary from the utilitarian to the overtly religious. But often no reasons can be given at all. Statistics purporting to show how frequently heterosexual couples break up, to the detriment of the children, or to show that homosexuals are less likely to damage their children than heterosexuals, would, even if they were reliable, have no impact on those who aver that society as we know it will collapse if the "normal" family is seen, as a matter of public policy, to be only one among a number of equally acceptable options.

Without entering into the arguments for or against such a view, we can see here in a stark form the question before us: If there is such strong moral feeling about the family, should the law intervene to enforce this majority view?

There are obvious parallels here with the question raised twenty years ago with regard to homosexual practices between consenting males. In a well-known essay, *The Enforcement of Morals,* Lord Justice Devlin (1965) argued that if large numbers of ordinary people feel disgust and outrage at the contemplation of something, then this feeling constitutes the morality of society, and it is the role of the law to enforce that morality, for if it does not, society will disintegrate. A common morality is the cement binding society together, and for the law to permit acts contrary to this shared morality is as paradoxical as if it permitted acts of treason, overtly directed to the destruction of society. Against these arguments, the legal philosopher H. L. A. Hart (1963) argued on broadly utilitarian lines, that there are two moral questions to be answered. First, is the practice in question morally wrong? and second, even if it is, is it morally right for the law to intervene to prevent it? For in some cases the moral wrong of legal enforcement might outweigh the moral wrong, if any, of the practice itself. The criterion to be used cannot be anything except the harm done. First, is the practice in question harmful to society? And, second, is it more harmful to society if the freedom to indulge or not indulge in the practice be removed?

Those who wish AID and surrogacy to be freely available argue first that these practices are not harmful to society. No one is forced to use them who does not wish to; but for those who do wish to, they may be beneficial. Being offended or outraged by the thought of something is not the same as being harmed by it. Nor is there any suggestion that the use of AID or of surrogacy will corrupt anyone. And, secondly, they argue that it would be an intolerable restriction

on individual liberty if the law made the practice of AID or surrogacy a criminal offense.

The Committee of Inquiry was faced, then, with a decision first on the morality or otherwise of AID and surrogacy, and, secondly, on what should be recommended to Parliament as possible legislation. The Inquiry, after much deliberation, distinguished the case of AID from that of surrogacy. I will try to explain why we did so.

Artificial Insemination by Donor (AID)

To start with AID: although there is evidence that many people indeed feel moral doubts about AID as a method of having children within either a heterosexual or a homosexual context, although these doubts have been fairly vociferously expressed both in Parliament and outside since the publication of the Report (U.K. Department of Health and Social Security 1984), yet there is by no means unanimity on this point. It would be very hard to take the view that society as a whole is so convinced of the wrongness of AID that to allow it to continue legally would loosen society's cement or undermine its fabric. And there are other points that weighed with us. AID is already commonly practiced, recommended, and facilitated by doctors and provided under the National Health Service. Not only so, but it can also be practiced by individuals without the intervention of the medical profession at any stage. If a woman has access to a source of semen, which can well be by private arrangement, she can soon learn to inseminate herself, and the success rate will be high. If AID were to become a criminal offense, therefore, the law would either be impossible to enforce, or it would involve an intolerable intrusion into private life, into people's houses, in pursuit of evidence that the crime had been committed. Moreover, unregulated AID carries risks, especially risks to the child who may be born, from genetically inheritable disease.

Since a law against AID would lead to an increase in "underground" or "back street" AID, these risks would be substantially increased. We therefore argued that whatever the moral desirability or otherwise of AID it was better to allow it to continue, subject to close monitoring (closer than is provided at present) than to try to outlaw it. We argued that AID would certainly remain an option whether for the infertile or for single people who wanted to become parents. It was,

therefore, necessary to subject it to control and licensing. There should be screening of donors, to ensure as far as possible, that disease would not be passed on; there should be a requirement that in licensed clinics proper records be kept (to ensure, for example, that a single donor did not father more than a limited number of children); and there should be adequate counselling and advice for those wanting to make use of the service. In this way the harm which might possibly affect the child of AID could be minimized.

Surrogacy

When it came to surrogacy, however, though a minority of the Committee wish to see it simply subject to controls parallel with those recommended for AID, the majority held that the answer to the first question: Is surrogacy itself wrong? was much more definite. We ourselves believed that it was wrong; and there was overwhelming evidence that a great number of the public at large shared this belief. We had here in fact something nearly approaching the "common moral view of society," at least of society at the present time. There is also a risk, hardly apparent in the case of AID, of exploitation, both of the surrogate mother, and of the couple or the single person wishing to make use of surrogacy to start a family. It was this possible exploitation that roused the strongest moral indignation.

Many people believe that it is intrinsically wrong for a woman to be used by some other party or parties to carry a child knowing from the outset of the pregnancy that she would, in the end, give the child up. It is recognized that women may give up their babies for adoption at the end of a pregnancy; but there seemed a difference between doing this as a matter of considered judgment, in the case of a pregnancy which was accidental or unwanted, and the deliberate entering into a pregnancy with the handing over of the child in mind from the beginning, especially where this was undertaken for profit. For this to happen, it was argued, was in itself a form of exploitation. Against this it was said, rightly, that no one is forced to act as a surrogate, any more than anyone is forced, or so we hope, to become a prostitute. It is a matter of individual choice. It is a way of making money not many of us would choose. But if there are women who do not object to it, who do not feel themselves treated as things

rather than as people, then they should be allowed to be surrogates in peace. There are, in any case, some women who would undertake surrogacy for a friend or a sister out of genuine compassion and generosity. It would be wrong for such people to be penalized.

Whatever our views about the rightness or wrongness of surrogacy, most of the Committee agreed that it was not something that, in itself, should be criminalized. Our recommendations were not designed to turn a surrogate mother herself into a criminal. And, as with AID, we recognized that a law against surrogacy would, in any case, be an intolerably intrusive, and ultimately an unenforceable, law. On the other hand, we were unanimous in holding it to be offensive for anyone to act as a commercial agent, offering surrogate mothers for payment to infertile couples or single men. This was, we thought, an area where the criminal law could and should be involved; and so we recommended. In this I believe we were in agreement with the vast majority of people in this country. Certainly the evidence submitted to the Inquiry, and further evidence that has been sought since the Report was published, confirms that there is an overwhelming feeling against such agencies operating in the United Kingdom (see, for example, a questionnaire published in *Woman*, a magazine with a circulation of 8 million, over 90 percent of whose readers were apparently against commercial surrogacy). Our position, then, was this: While we held that surrogacy generally was wrong, and that many people believed it to be wrong (in this already there was a difference from the case of AID) we did not recommend that the law should intervene directly to enforce moral opinion. On the other hand, the wrongness of surrogacy was held to be compounded by the wrongness of commercial exploitation; and here the criminal law might be invoked without undue intrusion. What should become a criminal offense would be the establishment of any kind of agency to promote or facilitate surrogacy.

The conclusion was, I believe, founded on a moral belief, but a belief not itself supported by strict arguments of utility. Neither members of the Inquiry nor members of the public at large would, I suspect, have been capable of working out the consequences of commercial surrogacy in terms of harms and benefits. We have here, I think, a moral judgment based on sentiment. The sentiment can perhaps be expressed thus: We do not wish to live in a society in which it is possible to trade in pregnancies. The law has long forbidden

the buying and selling of babies; in cases of adoption it is a criminal offense for money to be exchanged. Equally, then, we want to ensure that it is impossible, by payment of money, to bring about a pregnancy in someone who will ultimately hand over the baby in exchange. Here was a clear case where moral belief was so strong and so widely held that the Inquiry felt justified in recommending that it be enforced by the law, especially since such enforcement would be possible.

There will remain a minority who will hold that such legislation is unduly restrictive, and inhibits the freedom of the individual unduly. After all, if there is a market for surrogacy arrangements, should it not be permissible to cater to this market? To argue thus is not like arguing for a freedom to trade in, say, heroin. An agency for selling heroin must be criminal because of the manifest harm that heroin does its users, even if they want to use it. But the harms alleged to flow from surrogacy are disputable and hard to characterize. Moral outrage, as has been agreed in the case of AID, cannot alone count as harm. I believe that it is quite difficult to answer these arguments except by saying, "that is not what society wants." It is the kind of area, perhaps, where moral opinion may change. In that case it would be for someone, a private member, perhaps, to test public sentiment by proposing a new bill to legitimize controlled surrogacy. At present all I can say is that I do not believe that such a bill would get far in Parliament.

A Shared Moral Code

I have discussed AID and surrogacy at some length because the cases, though different from each other, illustrate one kind of problem the Inquiry had to face, where the question is whether and to what extent the law should be involved to enforce a sense of morality more or less widely shared among the public. One of the obvious difficulties is to establish what the moral sentiments of the public actually are. In a pluralistic society, such as ours, there is certain to be a wide diversity of views. Moreover, many people are reluctant to admit to having any specifically moral views at all; and when they are pressed to examine such questions as the Inquiry was concerned with, they find it difficult to know what they think. Those who do feel certain

about the moral issues are often those who are committed to a religion which either actually or apparently dictates moral attitudes to its adherents. (Though religion is often invoked by those who are certain, it is sometimes less than clear what religion itself would demand, in these mostly new debates we are engaged in.) The more certain people are of the correctness of their views, as a rule, the more vocal they are. It tends to be the hard-liners, in whichever direction, who tell their views abroad. And so there is a danger that "public opinion" may come to be identified not with the views of the relatively confused, relatively open-minded majority, but with the views of the committed and the fanatical. A shared moral code, such as Lord Justice Devlin thought so crucial to the survival of society, is very difficult to discover in difficult cases. The role of an Inquiry such as ours can only be to try to get it right, and above all to consider the moral arguments on each side, such as they are, and to set them out with clarity. This will help Ministers to make whatever case they decide to make, with a view to persuading Parliament. Moral opinions should, in any case, be based on reliable factual information; and another function of a committee of Inquiry is to sift through and sort out the facts that are relevant to decision making. But it has to be recognized that there is no such thing as a moral expert. I shall return to this point.

Experiments Using Human Embryos

Meanwhile, it is time to consider the other major issue before the Committee of Inquiry, the issue of experiments using human embryos. This was a different kind of question from those discussed so far. For there, as I hope to have suggested, we were faced with a moral question (what H.L.A. Hart [1963] calls a "critical" as opposed to a "primary" moral question), whether or not the law ought to be invoked in what was regarded by some as a purely private matter: by what means to establish a family. Whether or not to use human embryos for research, on the other hand, is something that manifestly can be left to the individual to decide. If only because so much research is funded by public money, the public has a right to demand an agreed policy in such matters. There have, it is true, been a few voices raised to suggest that to regulate by law what research may or may not be

carried out is an intrusion by government in what ought to be the free pursuit of knowledge. But, on the whole, everyone wants legislation: the general public so that they can be certain that no nameless horrors are going on, hidden away in laboratories; the scientific community so that they may be in a position to get on with their work, without the threat of private prosecutions, or disruption by those who object to what they are doing. Many scientists also want the onus of deciding what is and what is not morally acceptable to be partially lifted from their shoulders. More pragmatically, perhaps, there seems to be an absurdity in the present position, where there is an elaborate structure for regulating and controlling research using live animals, even at embryonic or fetal stages, and none to control the use of human embryos.

Legislation, then, is necessary, and is widely demanded. The question is not whether individuals should be allowed to do what they like, as long as it does not harm people, but whether the experiments at present carried out, which undoubtedly do harm to the embryo, should be permitted at all. If they are not permitted, it will be because of this harm. If they are permitted, it must be because the embryo, at a certain early stage of its development, is not yet morally significant; and because, on the other side, the benefits to other humans in society which will flow from such research are so great as to outweigh the insignificant damage. This, in crude terms, was the issue.

First, I should set out what the Inquiry recommended. We argued that research using human embryos should be carried out only subject to license. Each research project would require a separate license; and the license would be issued subject to conditions, for example, that the research was scientifically valid, and that it could not be carried out by any other means than by using human embryos. A licensing body should be set up which would consist not only of scientists and members of the medical profession but also of "lay" people without any financial interest in the research. There should be an inspectorate to ensure that research workers were not violating the terms of the license. In addition, we recommended that no license should be issued for the use of embryos for longer than fourteen days from fertilization, and that anyone keeping an embryo alive and unfrozen in a laboratory for more than fourteen days should be guilty, not only of a breach of the license regulations, but also of a separate criminal offense.

Formulating the Question

In order to begin to address ourselves to the question of whether research using human embryos should be permitted, albeit subject to controls, we had to formulate the question, and at this stage, having a philosopher as Chairman of the Inquiry was, I believe, useful, though often very tiresome for the members. Many people in evidence, and on the Committee itself, began by raising the question, When does life begin?, and then proceeded to argue that since life begins at conception, and since, therefore, the embryo is alive once the egg is fertilized, it must necessarily be wrong to do anything with the embryo other than implant it in a uterus. But it became clear that putting the question in this way, in fact, settles nothing. Nobody would deny that the human embryo was alive. Egg and semen equally are both alive and human, in that they are all elements in the process of human reproduction. From these agreed facts, however, no value judgment follows as to how the embryo (or egg or semen) is to be treated. So this was not a helpful way to formulate the problem.

Others wanted to raise the question in this form: Does the embryo have rights? and, if so, does it have the right to the full protection of the law, just as a child or an adult has? Here again, we were presented with a question which looked like a factual question ("does it have rights or does it not?, yes or no"), but which turns out on inspection to be a question of value. For under law at present, the embryo has no rights. So the rights it has, if any, must be thought to be *moral* rights. But if we ask the question in this form, "Has the embryo got a moral right to protection?" then we are plainly back in the business of value judgments, with regard to how the embryo *ought* to be treated, compared with the treatment of a child or adult. If this is what we are asking, then the introduction of the concept of rights into the question is merely confusing.

Some people then sought to answer our question by raising a further one, namely whether or not the embryo was a person. For if it was, then it should be afforded the same protection as adults and children. Children are recognized in law to be persons, in that they have the right to live and the right not to be experimented on. Not even a parent has any right to permit research on his child. If an embryo, like a child, is a person, then its treatment in these respects must

be the same. Once again the trouble with this question is that, though it looks like a question of fact, it is a disguised value question. For there is no set of criteria which will necessarily determine whether or not someone or something *is* a person, as there might be found criteria to determine whether or not some bird is a yellow wagtail or a grey wagtail. As the philosopher John Locke observed in the seventeenth century, "person" is a forensic term. No one is a person unless he is deemed to be so, for various legal purposes. To ask whether an embryo *is* a person is to ask whether either law or morality does or should treat it so. And this is plainly, once again, a question of value.

A Utilitarian Formulation and Moral Sentiment

Having ruled out all these ways of posing our question, the Inquiry was finally in a position to consider the true dilemma. How ought we to treat a human embryo? How are we, as a society, to weigh the undoubted damage to the embryo against the advantages that will flow from its use? How are we to recommend that new laws be formulated, so that the embryo will have clear legal rights, which it does not have at present? Many people, seeking to answer this at last overtly moral and not factual question, feel inclined to have recourse to the moral theory of Utilitarianism. Dr. Robert Edwards, for example, one of the founding fathers of *in vitro* fertilization in the United Kingdom, is explicitly utilitarian in his approach. The criterion of right and wrong must be the balance of pleasure over pain. If the results of research cause pleasure or happiness to those who are infertile, or whose interest is in the reduction of crippling genetic diseases, and if on the other side there is no pain caused to the subjects of research, the embryos themselves, then there can be no doubt where right lies. It is right to treat human embryos, provided that it is certain that they can experience no pain, in whatever way is most conducive to the benefit of the rest of the human race. There are innumerable benefits, medical and therapeutic, from research on embryos, both now and in the future. It is certain that the embryos suffer no pain, therefore the balance of good over harm, pleasure over pain, is completely on the side of research.

This is the straightforward Utilitarian view; and we have to remember that in matters of legislation, as distinct from private morality, a utilitarian criterion to distinguish good laws from bad is generally, even if not explicitly, applied. Will a particular act benefit more people than it will harm? Will the advantages to one sector of society outweigh the possible disadvantages to others? Such relatively crude measures have to be used.

But in this case there were other factors. We saw above that in the case of AID there was an argument, with which we agreed, that it was a practice not harmful in itself and that it should therefore be permitted, despite the fact that many people felt moral objections to it. With surrogacy, on the other hand, the strong feelings of outrage and indignation roused by at least commercial surrogacy seemed a sufficient ground for invoking the law to enforce what was in effect a shared moral opinion. In the case of research using human embryos, (and legal opinion went along with moral, here), it was impossible to argue straightforwardly that such research did no harm, unless "harm" was interpreted to mean "pain"; for the embryos, though they would feel no pain, would actually be destroyed, and this, it may be said, is harm, if anything is. The only way to avoid the conclusion that harm results from such research is to say that embryos do not count, in the utilitarian calculus. This makes it look as if the pain criterion is in fact irrelevant; and there is another reason against using it. For if research were permitted on embryos, provided they did not experience pain, what would there be to prevent a scientist keeping embryos alive for weeks on end, but under anaesthetic? No one would regard this as morally tolerable. The complications flooded in.

In the end the Inquiry felt bound to argue, *partly* on Utilitarian grounds, that the benefits that had come in the past from research using human embryos were so great (and were likely to be even greater in the future), that such research had to be permitted; but that it should be permitted only at the very earliest stage of the development of the embryo. At this stage, before the development of the primitive streak, and when the embryo is only two or four or sixteen cells, the connection between it and any possible future baby is extremely remote. The judgment, then, that research should be permitted only up to fourteen days from fertilization was not utilitarian at all, but intuitive,

and, perhaps, sentimental. But we must remember that morality cannot be divorced from sentiment; and that such a divorce, if attempted, would spell the end of morality itself. What we were saying was that, up to fourteen days, the embryo did not count; its destruction was not morally significant. This was not to say that human embryos were to be treated as in no way special, because of their humanity. For we argued that any research that used them must be scrutinized, and, among other things, shown to be essential. But we were, the majority of us, saying that an embryo before fourteen days was not a baby. It had not the same value.

The Argument from Potentiality

It was at this point that some members of the Committee, though they were supporters of the recommendation for a regulatory body, parted company from the majority. For they could not agree that any human embryo, however few cells it was composed of, should be treated as morally insignificant. Their argument was that since an embryo is potentially a human person, it must be protected by law as actual human persons are. I am not myself persuaded by the argument from potentiality. To say that a human embryo is potentially a human person is to say that it will or may become a human person if certain conditions are satisfied, namely if it is implanted in a human uterus. If it is not implanted its potential will not be realized. In my view, one might just as well say that an egg is a potential person, since if certain conditions are satisfied it will, or may, become a human person. In each case something else is needed for the potential person to come into being. It does not seem to me obvious that in every case there is a duty to provide that something. We are quite accustomed to the loss of eggs and sperm, all with the potential to turn into human beings in certain circumstances. We do not necessarily mourn, are often not aware of, spontaneous early abortions. Yet all these are cases of potential unfulfilled. Those who use the potentiality argument reply that, in the case of embryos used for research, these potential humans were deliberately brought into being. The wrongness of the act of destruction, or waste, is thus placed in the motive of the person who caused them to exist and be destroyed, not in the destruction itself. And yet, it can be argued, the motive was good:

a desire to improve human life, not to destroy it. Once again we come to a point of no reconciliation. Does the immediately post-fertilization embryo count, morally? Are we to be permitted to use it for the good of others, as we are not permitted to use a child?

The Committee recognized that there could be no halfway opinion here. No one wanted unregulated research, and so this was not one of our options. We had to choose between limited, controlled research and none. Between these alternatives there is no halfway. We had simply to recommend to Ministers what most of us thought right, after long and careful thought.

Ethics, Experts, and Legislation

And so the question is inevitably and properly raised, Why us? Who were we to dictate what should be permitted by law, in this or any other matter? The obvious first answer is that we did not dictate, we advised; and this we did because we had been asked to do so, and provided with facilities for the collecting of evidence and the gathering of facts, as well as time to think about what we discovered. In this way our judgments were likely to be more sensible and better based than some. But it is probable that Ministers hoped for more from us than they got. They may have hoped for a solution to the problems, and a clear unanimous voice explaining what was right and what was wrong. In this we failed, and rightly so. If our Committee had been undivided it would inevitably also have been unrepresentative, perhaps seen as biased. Nor can philosophy itself come up with definite "correct" answers, whatever may be expected of it by those who do not practice the subject.

But worse, perhaps, than the indecisiveness of the Committee was what has been described as its random membership. A rationale can usually be given for having this, that, or the other *kind* of person on a committee of this sort, but why *those* individuals? Why *that* chairman? I do not think there is a satisfactory way of answering this question. Peter Singer and Deane Wells, in their book *The Reproductive Revolution* (1984), argue that ethical committees set up to advise governments on issues of this sort are bound to reach wishy-washy and ambiguous conclusions, taking away with one hand what they give with the other, and they cite the example of the report of the U.S. Department

of Health, Education, and Welfare's Ethics Advisory Board (1979). They suggest instead that committees of inquiry into ethical issues should consist of ethical *experts*. They realize that many people will find the idea of such experts repugnant. Surely in matters of morality each of us is entitled to make up his own mind, without recourse to professionals? But, they say, if "reason and logical argument have some role to play in ethics" it follows that the first requirement of the expert is to be able to reason well, and detect errors in his own and others' reasoning. A second requirement, they say, is an understanding of the nature of ethics and the meanings of moral concepts. "A reasonable knowledge of the major ethical theories, such as utilitarianism, theories of justice and of rights, will also be useful." And the third requirement is the ability to learn certain salient facts relevant to the particular issues to be settled.

It is true that ethical experts so described do not sound particularly sinister. They sound like a collection of people who are reasonably bright, who have done a first-year course in moral philosophy at university, and who are able to read a book or listen to an explanatory lecture and get something out of it. But the only reason to call such people "experts" is so that their conclusions may be accepted as authoritative without question. Other people, both Ministers who have sought their advice and society at large, must be prepared to say "the experts have decided that this and that are right; and we must go along with it." Now in matters of life and death, matters of birth and of the family with which we were concerned in the Report, no one is going to give up his beliefs without a struggle. No one is going to accept what someone else thinks right just because he is told he should. For these are the very issues that lie at the heart of society, with which everyone is concerned, and which form the essential subject matter of morality. It is true that the work of a committee would be much easier if all its members had read philosophy at university, if all had a grasp of ethics at a theoretical level. A lot of uphill clarification would be eliminated. But it is difficult to see why all the members of such a committee should agree with each other on the real issues, even if they were all equally well-acquainted with the theories. Ethical decisions cannot be taken without the examination of ethical feelings. And people feel strongly on the issues we had to discuss, and this would remain true whether they were or were not good at arguments. Moreover, I do not believe that anyone

in society should be asked to disregard their own feelings of right and wrong, even though they may not ultimately see them contained in legislation. Though their sentiments may be changed by a greater knowledge of the facts or by the persuasiveness of some arguments, there is no reason at all why in the end they should all agree. Stuart Hampshire, in his important and highly pertinent book *Morality and Conflict* (1983), argued that, in any society, the existence of morality and of a broadly moral society depended on a belief that barriers must be set up, that there must be some acts regarded as intolerable, and that where such feelings were expressed in society, moral conflict was inevitable. I believe he is right. But the difficulty is then that the law cannot reflect this conflict. Where the horizons of moral concerns are widening, where issues arise in which there is no historical tradition, the voice of morality may be genuinely confused and uncertain.

But the law, unlike moral opinion, cannot be contradictory; it must be definite and unambiguous, and it must apply equally to everyone in society, not merely those who happen to agree with its ethical basis. Perhaps the most important point of agreement, in the field our Inquiry had to cover, was that *some laws or other* need to be enacted, and soon, before the swift developments in embryology go much further. We were, all the time, conscious that our moral pronouncements must be translated into possible law; that we were not concerned with private, but with public morality. Our modest hope was that we could come up with something practical, regretted no doubt by some as too lax, by others as too strict, but something to which, whatever their mental reservations, everyone would be prepared to consent. It is an area in which we all want to be governed; and government must, in the end, be government by consent.

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