

SCBI Response to the Republic of Ireland's *Stem-Cell Research (Protection of Human Embryos) Bill 2008*

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The stated intention of this Bill is to protect human embryos. It prohibits research that involves the destruction of human embryos and goes further by even prohibiting the use of any stem cells that have been derived from the destruction of human embryos. In addition, the Bill prohibits the creation of cloned human embryos or human-animal hybrids, their subsequent destruction in research, or the use of any cells derived from them.

At face value the Bill also appears to protect embryos in any other research context.

However, despite the stated intentions of the Bill, it does not achieve this goal.

In fact, the Bill allows for processes and procedures which either involve the destruction of human embryos or lead directly to their demise by other means. Furthermore, once legislative permission is granted for such activities, the principle that human embryos must be protected from any harmful intervention will have been lost. This will lead to increased pressure to later revisit the legislation with a view to expanding the circumstances under which human embryos are permitted to be destroyed – perhaps even to include the very research that the Bill now seeks to prohibit.

How is it possible that a Bill containing in its title the “Protection of Human Embryos” fails to do so?

The Bill achieves this by bracketing out artificial reproductive technology (ART) from the definition of “embryo-destructive research”. That is, the Bill excludes from the definition of “embryo-destructive research”: (i) *in vitro* fertilisation and accompanying embryo transfer to a woman’s body, or (ii) any diagnostic procedure carried out for the benefit of the human embryo which is subject to such test.

Therefore, this Bill provides explicit approval for ART.

In every context in which ART takes place, and specifically *in vitro* fertilisation (IVF), embryo transfer (ET) and related diagnostic testing, human embryos are placed at extreme risk with by far the majority being either discarded, subjected to procedures and processes involving their destruction, or allowed to succumb when unwanted. In data from the Australian state of Victoria, where arguably some of the best statistics on ART have been collected over many years, it is estimated that a mere 4.2% of all embryos created ever see daylight as born children.¹

In what has become common practice in IVF/ET, experimental procedures using embryos are conducted to improve success rates for treatment. Thus, embryos are subject to experimental protocols to improve culture media, improve transfer rates, improve freezing protocols, and refine

¹ Nicholas Tonti-Filippini, Reproductive Technology Outcomes in Australia: Analysing the Data, *Bioethics Research Notes*, 15(1):1-3, 2003.

genetic testing procedures.² These practices are not always defined as research, but rather as 'quality assurance'.

By enacting legislation permitting IVF and ET, this Bill would provide formal approval for ART in general, which cannot be separated from processes and procedures in which human embryos are far from protected. In particular, permission to carry out "any diagnostic procedure carried out for the benefit of the human embryo which is subject to such test" could be interpreted to mean that it would benefit an embryo diagnosed with a genetic defect *not* be transferred to the body of a woman. That is to say, some might mount an argument that certain genetic disorders render life 'not worth living', and therefore it would 'benefit' an embryo so diagnosed to be discarded.

There are two other matters which are crucially related to this Bill.

The first, and most important, is that the Constitution of the Republic of Ireland already provides protection for human embryos. Article 40.3.3 states that:

The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right.

At face value there is therefore no need to provide explicit protection for human embryos by legislation. The constitution already provides the necessary protection. However, by providing explicit permission for ART, which involves processes and procedures that involve the demise of embryos, this Bill undermines the constitution. Moreover, the fact that ART is currently being practiced in the Republic of Ireland already means the constitution is being undermined. Furthermore, the Irish people have rejected at referendum changes that would have limited the constitutional protection of the unborn to embryos *after* implantation. By that rejection, the Irish people have expressed their belief that embryos at every stage of development should still enjoy the protection of the constitution.

The second matter relates to survey work that sought to determine what the Irish people think about these issues. In 2001, the *Commission on Assisted Human Reproduction* undertook such social science research. They found that while 85% of people agreed with the provision of ART to married couples, 84% disagreed with the proposition that surplus embryos should be donated for research. This result reveals a desire to see embryos protected from harm at the same time as a desire to assist infertile couples. To make sense of this result it is fair to surmise that people were unaware of the fact that ART involves the routine loss of so much embryonic human life. If people were to be properly informed, it is likely that their views on ART may be tempered so as to match their views on protecting human embryos – in accordance with the constitution and the referendum vote.

Besides this major flaw with the Bill, there are other matters which need consideration.

² The impetus for embryo research in the context of ART was recently revealed in Australia. In 2002, legislation was passed to permit the use in research of unwanted ART embryos. The public and parliamentary debate was framed entirely around the possibility of cures from embryonic stem cells. However, in the 10 embryo licenses that were subsequently granted, 70% of all embryos marked for destruction in research were for ART research - refining culture media, training clinicians and developing genetic tests to deselect unwanted embryos.

First, the definition of an embryo has some circularity that could confuse interpretation. The second part of the definition defines a human embryo as “an oocyte that is in the process of fertilisation or undergoing any other process capable of resulting in an embryo.” Effectively this defines a human embryo as an entity capable of resulting in ... an embryo. This is unsatisfactory.

Second, since the Bill permits diagnostic testing of embryos, cells removed during preimplantation genetic diagnosis in ART may become available for research purposes. An embryo tested in this way may be transferred to the body of a woman or discarded. In the latter case a cell or cells will have been derived from a process explicitly intended to render some embryos unwanted and therefore destined to be discarded. Thus, the intent of the Bill will have been subverted, *viz.*, to “prohibit all research involving or deriving from the destruction of human embryos.”

In summary, this Bill does not accord with the guaranteed right to life of human embryos provided by the constitution of the Republic of Ireland. For legislation to be constructed that is consistent with the constitution and therefore the will of the Irish people, due recognition will have to be given to protecting embryos from routine destruction in ART.