DISCUSSION ON THE EMBRYO

INVITED BY THE NSW LAW REFORM COMMISSION

by Tom Daly S.J.

The NSW Law Reform Commission in its Discussion Paper In Vitro Fertilization [1] has a chapter entitled "Research, Experimentation and IVF".[2] I restrict my comments (apart from an appendix on one earlier page) to that chapter.

At the beginning of this chapter its authors say:

> "The debate today is, for all practical purposes, a debate about research" (8.1)

This is misleading. The debate in fact is only about destructive research. There is no debate at all about research on human embryos which not likely to destroy them, but is aimed at the good of the embryo actually being experimented upon.

There is simply no opponent at all against whom the arguments in favour of research in general have been marshalled. The authors admit this quite openly:

> we are not aware of any argument or proposition ever having been put that research aimed to benefit a particular IVF embryo, should be prohibited or restricted". (8.38)

Only after thirteen pages is the debated issue even mentioned, thus:

> prohibition of 'destructive non-therapeutic experimentation" . . . would, we believe, prevent research on IVF conceptuses of the kind described in paragraph 8.20. (8.32)

The reader has found at last what the real debate is about. It is about a particular "kind" of research, a kind that in the belief of the authors must be described as "destructive non-therapeutic experimentation", or, in equivalent words, as:

> experiments [that] are, in the present state of knowledge, so invasive as to inevitably cause the destruction of the subject of the experiment. (8.32, quoting Tate 2.31) [3]

Indeed, they could have added that all, or almost all, those who oppose destructive experimentation on embryos have made a point of stating that they have no objection to therapeutic research.

The argument is about destructive research and that alone.

To understand the issue correctly anyone who reads this chapter should insert the word "destructive" before the word "research" each time the latter word occurs, for instance in paragraphs 8.1, 8.2 (twice), 8.3, Part II heading, paragraphs 8.15 (twice), 8.20, 8.21 (four times), 8.29, Part III heading, Part III.A heading, paragraphs 8.37, 8.52 (twice).

Their omission to do this has led the authors into the ridiculous position of claiming that doctors would not be ready to practice medicine in a field in which experimentation that involved killing the subject of the experiment is not allowed.

They say that the

> recommended prohibition of 'destructive non-therapeutic experimentation' . . . may have other consequences as referred to in paragraph 8.21, (8.32)

and we find that the consequences referred to there are the cessation of "medical progress", of "the practice of IVF" and of the practice of "any branch of medicine in a field in which [such] research was inhibited legally". (8.21)

They would have done better to face the real issue directly from the start. The debate is about embryo experimentation of a sort that involves the killing of the embryos.

DELIBERATELY KILLING HUMAN EMBRYOS

Since the debate is about destructive experimentation on human embryos, the question that arises immediately is whether the deliberate killing of human embryos may sometimes be morally acceptable.

A number of people recommend this, though very few of them are ready to state this explicitly, and far fewer state the basis for

their decision or argue for it. They have to hold either

(1) that it is not always wrong to kill another innocent human being, or

(2) that no human embryo is a person.

DO PEOPLE REALLY DIFFER ON WHETHER THE HUMAN EMBRYO IS A PERSON?

I do not think anyone in our context who has entered into this debate has supported destructive experimentation simply by claiming that it is not wrong to kill innocent human beings.

Even Professor Singer, who allows in some cases the killing of a baby within a few months after birth, does this by arguing that such a baby is not a human person according to his definition, and so he is not claiming that killing a human person is justified.

Who, then, argue that a human embryo is not a human person? Surprisingly few, when all the dust has cleared, have directly addressed this substantial issue. Indeed, this Discussion Paper is almost the first intervention in the debate by anyone favouring destructive experimentation that has entered into this discussion.

The Warnock Committee [4] side-stepped the issue. The Waller Report [5] contained a Dissenting Report [6] arguing in favour of the embryo, but left these arguments unanswered.

Not one of the medical or scientific witnesses before the Tate Committee claimed in a submission that the embryo is not a human person or even a human being, or submitted medical or scientific evidence in support of such a claim. One medical man submitted a paper by a British Anglican Theologian [7] which came close to making this claim, and a few others, as well as one lawyer, mentioned that same paper favourably.

Very few made submissions to the Tate Committee denying the humanity of the embryo, and the authors of the Discussion Paper ignore the evidence given by these when questions were directed at them by the Senators.

Professor Short was the only scientist who briefly supported this in oral evidence,[8] but not even he made any attempt to examine the arguments in the many submissions which were backed up under questioning by the Senators, and which were later taken up in the majority Report.

Even the minority Dissenting Report [9] from the Tate Committee explicitly accepted (D.11) the bulk of the majority's conclusion on what an embryo is, though unaccountably claiming that the question "Who should decide?" somehow lessened the importance of questions on what they are deciding about or what facts are relevant to their decision.

All the Senators were very interested in the issue, and directed many of their questions to it, and especially to data that would support a marker event other than fertilization, and to evidence

for claims that implantation, or twelve days of cleavage, or the possibility of dividing into twins, might serve as a marker event.

The many pages of Hansard questioning regarding this twelve days show that the medical witnesses were not ready to claim any significant marker event about that time. The evidence they gave (rather reluctantly) is an important part of the support for the conclusions of the Tate Report. The Discussion Paper makes no reference to this evidence, though arguing on this issue. Indeed, the only references that the it makes to the Hansard oral evidence or written submissions come from an extremely limited range.

On the other hand, there is a mass of evidence, much of it taken from medical men and biological scientists, actually provided in submissions that claim that the human embryo is a distinct person. This was not denied or queried by subsequent witnesses, nor was it upset by questions from the Senators.

CONFLICTING VIEWS ?

The conflict of views is claimed to be illustrated by the opposing views within the Tate Committee. The view of the majority (in Tate 3.7) is quoted, and the statement is made that the minority report strongly disagreed with this (8.14). The fact that the Dissenting Report explicitly agreed with the majority account of what an embryo is (D.11) is overlooked.

The conflict between the minority and the majority on the Tate Committee is not on whether the embryo is an individual human being, nor (explicitly, at least) on whether it is right to kill human beings, but simply on who should decide about this sort of human being. The question of what is a good decision is left open by the minority, and so the issue has not been properly resolved.

Everyone knows that in football it is the umpire who has to make the decisions about free kicks. But most of us are convinced that some decisions are good ones and others are bad. Even the umpire himself can at times recognize that his decision has been a bad one. Until the minority have indicated what would be a bad decision regarding embryos the conflict within the Tate Committee has not gone very deep.

THE ARGUMENTS

One very welcome aspect of this Discussion Paper is its readiness to consider the question of human status for the embryo and to formulate arguments against it. It is almost the first intervention in the debate by anyone favouring destructive experimentation that has entered into this discussion.

The substantial arguments against human status for the embryo proposed by the authors of this Discussion Paper can be gathered from a number of different places in the chapter, under the headings, "I. STATUS OF THE OVUM FERTILIZED IN VITRO. B. Anatomical and Physiological Characteristics" (8.7, 8.9),

"C. Legal and Moral Status of the IVF Embryo" (very briefly, within 8.10 - 8.14), "II. RESEARCH ON HUMAN SUBJECTS AND THE IVF EMBRYO. 6. The Australian Senate Select Committee Inquiry." (8.33, 8.35-36), "III. A SUMMARY OF THE DEBATE ON IVF RESEARCH AND SOME TENTATIVE CONCLUSIONS. A. Arguments for Restriction of Research" (8.37), "B. The 'Capacity' or 'Potential' Argument" (8.39 - 8.46), and "D. Our conclusion on the debate" (8.51). In expounding and discussing them I will not necessarily follow this order.

DEVELOPMENT PRESUPPOSES DEVELOPMENTAL POTENTIAL

The authors twice mention the view that the embryo is a human person,

> The first [of three "lines of thought"] is that from the 'moment' of fertilization the IVF conceptus <u>is a human person</u> or has the capacity to become a person and therefore should be accorded all the rights attaching to 'personhood'. (8.10, my emphasis)

> The [Tate] Committee did not assert that the IVF conceptus is a human person. However, a majority of the committee in effect did so by recommending that, in relation to research, it should be treated as though it were a living person. The basis for recommending this degree of respect was said to be its "orientation to the future" (Tate 3.6). In the words of the majority . . . . A minority report . . . strongly disagreed . . . (8.14, quoting Tate 3.7)

Their only arguments directed against this view are those contained in these passages, as their later discussion presumes that the embryo is clearly not a person but only "has the capacity to become" one.

They are wrong to call "orientation to the future" the basis for the Tate view. There are other important elements in their definition of the embryo which help to indicate something "already" (see Tate 2.18) possessing all that is required to be a human person. All these elements (including a phrase equivalent to "orientation to the future") are contained in the following passage from the Dissenting Report:

> the Report . . . draws the conclusion (in paragraph 2.6) that the fertilised ovum has 'life', that it is genetically human, that it is an entity - a centrally organised unit with purposeful independent function - and that it has developmental potential. We agree with this conclusion. (Tate, D.11)

It is clear that Senators Crowley and Zakharov did not dissent from the majority on the full humanity of the embryo. Their dissent was centred on "who shall decide" [10]. They led up to this with the argument that "the particular future outcome that actually happens is determined by forces outside of itself. An embryo . . . . has potential only in virtue of decisions by others about it." (D.20)

In this they are obviously wrong. The forces and decisions outside the embryo can only set limits to its development. They do not in any way give it its potential. It has had this fully from the time that the sperm head entered the ovum triggering it into action and determining its mode of action and full genetic plan of operation. From that time the embryo possesses in itself incredibly great potential, quite different from the potential of a mouse and enormously greater than that of a rock or a drop of water or a motor car.

This error of the dissenting senators is shown by their confusion between achievement of potential (or actual development) on the one hand and the developmental potential itself on the other. They are right in speaking of

> the necessity of implantation for the developmental potential of an embryo to be achieved (D.27)

and saying that

> without implantation in a uterus, there is no [further] development of an embryo (D.28).

But they are wrong in concluding from these and similar statements that

> developmental <u>potential</u> is dependent on successful implantation (D.26 my emphasis).

The authors of this Discussion Paper are clearly caught in the same erroneous logic.

The uncertainty of further development, of course, applies to any stage in an embryo's growth. Without food, without warmth, without protection, there is no further development. Briefly, there is no age at which an embryo or fetus could not easily be killed. And that has nothing to do with the question of whether the embryo (or fetus) has developmental potential. This concerns what it has within it, not what it depends on from outside.

As for the lack of a nervous system in the early embryo (8.9), this shows the absence of conceptual activities (though not necessarily the absence of more basic human mental activities, such as wonder and understanding and the consciousness associated with these). It does not, however, show a lack of genuine human capacities unless there is some indication of a source other than the embryo itself from which a nervous system might develop. No such source has been indicated or even suggested. The formation and development of a nervous system depends completely on the genetic structure of the DNA already fully possessed by the fertilized ovum. The capacity, therefore, for the sort of human mental activity that requires a nervous system is already, from the one-cell stage, written into the tiny but extraordinarily complex structure of the DNA within the zygote.

This error is compounded by their failure to define "human person", or to examine the concepts of a person which were offered to the Tate Committee. This would seem to be an important component of any discussion on this issue. Without it they cannot argue clearly against the claim that an embryo is an human person.

Defining "human person" is not at all as difficult as some writers on our topic would suggest. The evidence before the Tate Committee showed that our own Bioethics Centre was ready to agree with, and argue from, a definition given by Professor Peter Singer, even though we do not accept his recommendation for the killing of babies in some circumstances up to a few months after birth. I quote from the St Vincent's Bioethics submission:

> A fourth notion that has to be analysed is that of a human being, or a person - since in ordinary language these two notions are identical, and remain so unless language is considerably strained or biological information is ignored. A person is a living individual with the capacity to wonder, to understand, to affirm truth and to make decisions. This definition is close enough to that of Professor Singer, which we are happy to accept:
>
> > A human being is a being possessing, at least at a minimal level, the capacities distinctive of our species, which include consciousness, the ability to be

aware of one's surroundings, the ability to relate to others, perhaps even rationality and self-consciousness.

He has to speak in terms of capacities to exercise these "morally relevant characteristics", and not in terms of the actual exercise of them, as otherwise no ordinary adult could properly be called human, since, for very much of the time, for instance when we are asleep, we are not actually exercising any of these specifically human powers.

But we have to differ from Singer on . . . his claim that the embryo does not possess the capacities concerned. This latter claim must be assessed according to the biological evidence. (Tate, Hansard, p 189-190).

The question that Singer, and those who are confused by talk about potential, have not yet answered is: How did an adult acquire these capacities if he did not already have them basically when a zygote? The options available are food, miracle, and magic. Abundant food over the centuries has never given individual dogs or grocer shops these human abilities. Not everyone believes in miracles. Without saying so, Singer seems to assume the operation of magic.

In his own submission Professor Singer correctly rejects the premise "Every potential human being has a right to life" (Tate, Hansard, p 484). But he cannot so easily deny that "Every human being possessing at least at a minimal level the capacities

distinctive of our species has a right to life", and, apart from magic, he cannot deny that "The embryo is a human being possessing at least at a minimal level the capacities distinctive of our species." And so he, too, should conclude that "The embryo has a right to life".

The embryo's "developmental potential" is, as the Tate Report says, "of great significance" (Tate, 2.6, see also 3.6 &p.xiii). But so also is the source of that potential.

ORGANISATION

While this "developmental potential" which is written in the genome of the embryo is of great importance, it is not the only important element in the Tate definition of an embryo as

> genetically new human life organised as a distinct entity oriented towards further development. (Tate 2.21, also 2.6, 3.5 and D.11-15)

The fact that it must be organised is also important, especially in so far as it is "a centrally organised unit with purposeful independent function" (D.11). This whole notion is frequently missed by people who talk about life, or about persons, or about embryos, and that seems to be the case with this Discussion Paper too, and its advisers.

Organisation involves a complex variety of parts which all serve a single intelligible function, such as the preservation and

development of the life of a single individual; and a variety of processes, events and functions which also make sense as coordinated in such a way.

Before ovulation "the ripening ovum" (8.36), while admittedly "genetically new", is still part of the ovary and of the mother, developing under their organisation. Later, it becomes free from this and then possesses its own organisation which can operate to preserve it in life for up to about 24 hours. It is not, however, of itself oriented to further development until the head of an ovum enters it, or it is otherwise "stimulated" in some special way.

The merging of the cell membranes of the sperm head and of the ovum, the sudden functioning of the cortical granules, the production and operation of organelles for the transport of the genetic material and the formation of new membranes around the pronuclei, are some of the many processes that show that a new and distinct single individual has emerged.

The argument, therefore, that

> the majority report's definition of "embryo" is defective (8.35)

has no force when the only element of the definition that is considered is the uniqueness of the genome.

As for the "unfertilized human ovum that has been stimulated parthenogenetically", and is said to be "neither an embryo nor a fertilized ovum in any normally understood sense" (8.36), it would seem that at present we know very little about parthenogenesis in humans, or even mammals. But if a "human ovum that has been stimulated parthenogenetically" is in fact covered by "the majority report's definition of an embryo", then experiments on it can rightly be prohibited, granted the extent to which such experiments have succeeded in lower animals, and even among mice.

As for those human tissues such as

> terato-carcinoma cells [whose] further development involves a disorganised differentiation into types of human somatic cells such as teeth, muscle and skin, but cannot form a human person (8.36)

they are disorganised in their proliferation, and so show that any embryo from which they may have sprung is now dead. Thus they simply do <u>not</u>, as the Discussion Paper claims:

> answer the description "genetically new human life <u>organised</u> as a distinct entity oriented towards further development" (8.36).

ORGANS

When the notion of organisation is not well understood we can expect problems with organs too. The authors, while referring to

a medical authority, seem to be putting things in their own words when they say that the outer cell layer of the morula gives rise to the trophoblast (whose function is not further mentioned), while it is the

> inner cell mass which may subsequently give rise to placental membranes and the embryo, properly so-called (8.5).

Moore, in another book, puts it differently:

> As the fluid increases, it separates these cells [of the morula] into two parts; (1) an outer cell mass called the **trophoblast** . . . [which] later forms the major part of the placenta) and (2) a group of centrally located cells known as the **inner cell mass** (embryoblast). The inner cell mass subsequently differentiates into the **embryo.** By the fourth day . . . " [11]

So the <u>whole</u> of the morula is a centrally organised unit which is growing into the still centrally organised unit made up of organs which will survive birth and are sometimes thereby defined as the "embryo proper", along with other organs, the placenta and the membranes, which are just as much part of the single unity, since it is precisely to serve the total unity as its organs that they have to develop rapidly at this very early stage.

That the products of the trophoblast are genuine organs is, of course, standard knowledge:

> Before birth, the placenta and fetal membranes perform the following functions and activities: protection, nutrition, respiration, excretion and hormone production.[12]

Professor Roger Short clarifies the terminological issue:

> An embryologist would define an embryo as the future individual, the future person if it is a human, not the placenta. (Tate, Hansard, p. 2163, my emphasis)

While this distinction may be convenient for purposes of anatomical description, it completely ignores the unified coordination of function that was central to the life of the embryo (even so defined) throughout its time in the womb, in the fallopian tube, or in the petri dish. Drawing a definition from the future has distracted attention from the actual present of the human individual at any of those times, and from the unity of the components of that individual both in their functioning and in their origin.

Dr James Cummins avoided this confusion when he spoke of

> differentiation into the embryo proper and its placental components (Tate, Hansard, p.2048, my emphasis)

But people who have not reflected sufficiently on the unity of organisation that is so central in the life of every individual living thing are often misled by phrases like "the embryo, properly so-called" (8.5, and, more, pointedly, 8.7) into thinking that the early morula was not a genuine human individual.

INDIVIDUALITY AND TWINS

Those who have not thought much about organisation are puzzled also by the notion of individuality. Hence the authors of this Discussion Paper seem very confident in using this notion (along with their misunderstanding of "capacity" that we have already examined) as a significant part of their definitive statement denying human status to the embryo:

> Prior to implantation, the conceptus lacks even the rudimentary structures of a nervous system. It has no capacity to think or feel. It is <u>not yet individual</u> (see para 8.7). It follows that the proposition that the pre-implantation conceptus should be accorded all or some measure of the respect that we accord to human persons, must be based upon considerations other than biological status. (8.9, my emphasis)

But when we turn back to the paragraph referred to we find a surprising coyness:

> <u>It has been said that</u>:
>
> . . . biologic individuality emerges only after implantation

> and the emergence of the embryonic axis [primitive streak]. Prior to that time,several or no embryos might emerge from the developing fertilized egg. (8.7)

And the American lawyer, Robertson, who is given as the reference for this, also distances himself from it in a similar way:

> Grobstein also argues that biologic individuality emerges only after . . .[13]

Robertson himself is clearer later:

> Prior to this point, the pre-embryo is not individual since twinning, which produces two individuals, or mosaicism, which produces less than one, could still occur.[14]

This argument had captured the interest of the Tate Committee, whose members persistently questioned their witnesses about it and eventually concluded that

> No marker event advanced carried such weight that different principles should apply to distinguish the fertilised ovum from that which all would agree is a human subject. (3.5, see also 3.9, 3.19)

In answer to such questions, Professor Singer has said:

> I would have to say that I think it would be a mistake to

> base one's case heavily on the fact of twinning (Tate, Hansard, p. 507-8)

and

> I think, in the end, I would not really place weight on the argument about twinning (Ibid., p.508).

In fact, the argument that an embryo could not be an individual before it forms into twins has no weight at all. If it did have any, there could never be an individual amoeba, or an individual rose bush, since each of these can give rise to a new individual of the same sort. And a mouse would have to be declared a non-individual retrospectively if an experiment to take a clone from it should prove successful.

This Discussion Paper, in bringing up this issue once again, ignores the argument on this issue, the conclusions of the Tate Committee, and the evidence presented by the witnesses.

It nevertheless turns out eventually to be explicitly ready to extend the time limit well beyond 14 days, though leaving it at that for the present, simply through "a belief that the community would not tolerate at present the growth of conceptuses and embryos in laboratories for periods beyond the time when they could be feasibly transferred to a human uterus. (8.56, cf. 8.57 "to the stage before the development of sentience")

HISTORY

The authors of this discussion paper, ignoring the strong opposition to destructive embryo experimentation recently expressed by the General Synod of the Anglican Church of Australia and by the Australian Episcopal Conference of the Catholic Church (both supported by submissions to the Tate Committee) [15] refers to the views of some British theologians [16] on "the moral and theological Judaeo-Christian tradition" (8.46), which the Tate Committee saw fit to do no more than note (Tate, 2.38, see also D.94).

They ignore the evidence showing that this tradition, in so far as it allowed some distinction between the degrees of disapproval assigned to attacks on the embryo and the fetus, was explicitly based on gross errors of ancient biological science which were not seriously questioned before the seventeenth century, but which since then have been completely overturned (Tate, Hansard, p. 183-5). The distinction became untenable once the theories of the maternal contribution to conception simply through (cell-free) menstrual blood and of spontaneous generation had been disproved.

A RADICAL DIFFERENCE BETWEEN EMBRYOS ?

The authors' supposed trump is the argument that the IVF embryo differs from the natural embryo, and that this difference completely changes the way it may be treated.

> The ovum fertilized in vitro, while outside the human body, differs profoundly from the naturally-fertilized ovum or conceptus (8.3)
>
> nowhere (in the Tate Report) is there any reference to the differences between an ovum fertilized by the IVF process and one fertilized by sexual intercourse (8.33)
>
> The IVF embryo does not have the capacities described in both quotes above (8.44, my emphasis in these three passages).

These capacities have been described as:

> the capacity for further development as an individual human being (Tate 2.17, quoted 8.41)

and:

> the capacity for directing its development in such a way that a brain is developed suitable for all those activities which we saw to be characteristic of human beings . . . The capacities for those activities already exist in the genetic material of the [embryo]. (Tate 2.18, quoted 8.41)

And the fulfilment of outside conditions is said to be of no help:

> The IVF embryo could never become a human person. If given nourishment, the best available environment and no interference to impede its development, it will still wither and perish within a few days. (8.44)

This is simply not true. If it were, embryo transfer would never produce a single pregnancy. The whole long negative argument of the Discussion Paper is completely false, as it is based on this patently untrue proposition, which is proved false by every successful case of IVF and ET.

Each such case proves that even an IVF embryo is a human being with the capacity to grow to an adult. A person who produces such an embryo with the intention of denying it the "nourishment and a non-hostile environment" that is available in the womb of a woman who desires to receive it is morally equivalent to the director of a space mission who brings the astronauts' capsule back to earth in the ocean and prevents any ship from approaching it.

The authors of the DP, like the Tate Dissenters (D.20), have made a completely unjustified jump from a lack of fulfilment of potential to an absence of the very potential itself. They do not tell us where in fact these capacities come from.

Their great discovery and knock-down argument is that there are people around who can refuse nourishment to the embryo, or who can put it where no nourishment is provided. This only shows that the human capacities can be destroyed and stifled, not that they

were never there. At any moment in our embryonic, child, or adult life our human capacities can be snuffed out. This is what is normally called killing, and it can be done in any of a large number of ways.

When it all boils down, the differences between IVF embryos and other embryos which are so central to the argument of the DP, are not differences between capacities that one possesses and the other does not. They are simply differences in the ease with which these two types of embryo can be killed.

Negative aspects of the future of an embryo are determined by forces outside of itself (such as fires, poisons, earthquakes), including decisions by others about it (such as decisions to kill it). But these do <u>not</u> determine its positive future. Neither the forces of nature nor the decisions of others can enable a rock to develop as an embryo, nor a mouse embryo to develop as a human one. The difference is precisely in the different developmental potentials possessed by each of these three.

Maximilian Kolbe was put in the starvation cell at Auschwicz by the Nazis. He had developmental potential, which depended for its actualization on the provision of nourishment. But this in turn depended on the decisions of others, and they prevented his development.

Was the officer who locked him in that starvation cell, knowing that no food would be supplied to him guilty of killing him?

Or should we say that Kolbe, once in this cell, was entirely different from the other prisoners? That, once he was in the cell, he had no "developmental potential", and so should no longer be treated as a human being?

Both Kolbe and the experimental embryo were consigned to death by being put in a place where nutrition was not within reach. Despite this, Kolbe had the capacity to continue life as an adult provided the nutrition, warmth and nourishment required by an adult were provided. Every living human embryo, too, has the capacity, which a rock or a sperm or a mouse embryo completely lacks, to continue life as a human being and to grow into an adult human being, provided the nutrition, warmth and protection required by an embryo are provided.

The authors of the NSW Discussion Paper fail completely to bring this to our attention. But the differences they mention cannot conceal the enormous positive similarities.

CONCLUSION

We must, of course, discuss this paper. But we cannot recommend it as a paper for opening up discussion among people who have no ready access to previous documentation, or who who lack the skills or time to uncover the fallacies of subtle advocacy.

Because

(1) it misrepresents the topic of the debate,

(2) it exaggerates the degree of conflict on the central issue of whether the embryo is an individual human being,

(3) it treats an actual human being with developmental potential as though it were something not yet a human being with some vague potential to develop into one,

(4) it pretends that a difference in the situations in which a thing happens to be is really an intrinsic difference in the thing itself,

this chapter does not indicate a balanced discussion paper but simply an attempt to divert attention from the conclusions of the Senate Select Committee on Embryo Experimentation, and from the evidence before that Committee.

It is most easily understood if looked on as a protest on behalf of the Medical Research Ethics Committee of the NHMRC against the Senate Select Committee for investigating the matter so fully and coming to conclusions different from those which the MREC had promulgated in 1983.[17]

APPENDIX

The Discussion Paper devotes over a page to the Instruction on Respect for Human Life in its Origin and on the Dignity of Procreation [18], in Chapter 4. Artificial Conception - the Debate", II. "AN OVERVIEW OF THE PUBLIC DEBATE". B. "Some Objections to IVF". 1. "Improper Separation of Procreation from Sexual Love".

Section 4.11 is devoted to an argument by John Fleming. Section 4.12 is a reply by Dr 1. Miller, and Sections 4.13 - 4.15 are on the Instruction just mentioned. The first two of these outline "Two propositions [which] provide the foundation of the statement" (4.13), and the third argues that they can be disregarded in a multicultural society.

The Instruction is seriously misrepresented in Section 4.14, which reads:

> The second proposition is that the fertilized human ovum is a human person and must be treated as a person from fertilization. The statement does not seek to prove this proposition by scientific argument but rather by reference to the Church's teaching and doctrine.

In fact, the instruction, while relying on previous Church teaching on the matter, refers twice to its confirmation by modern science. Its main statement on this is as follows:

> The Congregation recalls the teachings found in the Declaration on Procured Abortion: "From the time that the ovum is fertilized, a new life is begun which is neither that of the father nor of the mother; it is rather the life of a new human being with his own growth. It would never be made human if it were not human already. To this perpetual evidence . . . modern genetic science brings valuable confirmation. It has demonstrated that, from the first instant, the programme is fixed as to what this living being will be: a man, this individual-man with his characteristic aspects already will determined. Right from fertilization is begun the adventure of a human life, and each of its great capacities requires time . . . to find its place and to be in a position to act". This teaching remains valid and is further confirmed, if confirmation were needed, by recent findings of human biological science which recognize that in the zygote resulting from fertilization the biological identity of a new human individual is already constituted.[19]

Even if someone should claim that a human individual is not yet a person, the Instruction gives an answer based on science and on intelligent reflection, not just on "Church teaching and doctrine".

> The conclusions of science regarding the human embryo provide a valuable indication for discerning by the use of reason a personal presence at the moment of this first

appearance of a human life: how could a human individual not be a human person? (Ibid.)

The fact that the authors of the Discussion Paper do not even mention that scientific confirmation, far less ask about it, is particularly significant in view of their failure in Chapter 8 to address the question of what the ovum fertilized in vitro actually is and what capacities it already possesses, when they direct our attention instead only to what such an embryo is to become. (8.45)

Here in Chapter 4, they go on to argue from "surveys of public opinion". Such surveys, however, are a poor basis for serious argument when it is clear that the people surveyed have not had the scientific information put before them and that they have no more knowledge of the Instruction than was given them by the mass media in such headlines as "The pope hates my baby - says IVF mum".[20]

FOOTNOTES

1. New South Wales Law Reform Commission, Artificial Conception Discussion Paper 2: In Vitro Fertilization, Sydney: 1987. (Numbers without prefix in the text will refer to sections of this Paper.)

2. Ibid., Chapter 8, pages 91 - 122.

3. Numbers in the text with the prefix "Tate" will refer to section numbers in: Senate Select Committee on the Human Embryo Experimentation Bill 1985, Human Embryo Experimentation in Australia, Canberra: Australian Government Publishing Service, 1986. This Committee was chaired by Senator Michael Tate.

4. Mary Warnock, A Question of Life: The Warnock Report on Human Fertilisation and Embryology, Oxford: Basil Blackwell, 1985, §11.9 (p.60).

5. The Committee to Consider the Social, Ethical and Legal Issues Arising from In Vitro Fertilization, Report on the Disposition of Embryos Produced by In Vitro Fertilization, Melbourne: 1984. This Committee was chaired by Professor Louis Waller.

6. Ibid., p. 75-78, Appendix C, Statement of Dissent on Embryo Research by Professor Priscilla Kincaid-Smith and Professor Roger Pepperell.

7. G. R. Dunstan,"The Ethical Dilemma", a paper at the 4th International conference on in vitro Fertilization: 22 Nov. 1985, reprinted in Senate Select Committee on the Human Embryo Experimentation Bill 1985, (Official Hansard Report), Canberra: Commonwealth of Australia, 1986 (referred to in my text as Tate Hansard) p. 633-640, as a submission by Mr Ian Johnston.

8. Tate, Hansard, p. 2154-5.

9. Tate, p. 65-93, with sections numbered D.1 to D.134. Dissenting Report by Senator Rosemary Crowley and Senator Olive Zakharov. (Numbers in the text prefaced by "D." refer to sections in this Dissenting Report.) For a detailed analysis of this see Anthony Fisher, "A Litany of Sophistries: The Minority Report Of The Senate Committee On Human Embryo Experimentation", Australasian Catholic Record, 64 (1987) p. 82-93.

10. D.36, 37, 38, 40, 44, 46 - 52, 54, 57, 60, 62, 63, 83, 98, 101, 102, 108, 111, 117, 119-122, 124 - 26.

11. Keith L. Moore, Before We Are Born, Philadelphia: Saunders, [2]1983, p. 27.

12. Moore, Ibid., p. 82).

13. John A. Robertson, "Embryos, Families, and Procreative Liberty: The Legal Structure of the New Reproduction", Southern California Law Review, 1986, p. 942-1041, in note 92)

14. Ibid., p.970.

15. Tate, Hansard p. 891-998 and 2266-2276 respectively.

16. P. Badham, "Christian Belief and the Ethics of In-Vitro Fertilization and Abortion", Bioethics News, 6(1987) p.7; G. R. Dunstan, "The moral status of the human embryo: a tradition recalled", Journal of Medical Ethics, 1 (1984) p.38.

17. National Health and Medical Research Council, Ethics in Medical Research Involving the Human Fetus and Human Fetal Tissue, Canberra: Australian Government Publishing Service, 1983.

18. Sacred Congregation for the Doctrine of the Faith, Instruction on Respect for Human Life in its Origin and on the Dignity of Procreation, Homebush, N.S.W.: St Paul Publications, 1987.

19. Ibid., Part I, question 1, p.20-21.

20. See the full treatment by Anthony Fisher OP, "Humanae Vitae in Vitro; Australian press criticism of the Vatican Instruction on IVF", The Australasian Catholic Record, 64(October 1987) p.400-420.