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The Morality of Embryo Use and the Argument for Precaution

I. Introduction

The research with human embryonic stem cells gives rise to great expectations for the treatment of some of the most widespread diseases in our societies. If these hopes turn out to be true, it will be possible to cure certain kinds of cancer, to regenerate a heart that suffered a heart attack, and much more with the help of stem cells one day. On the contrary, there are major doubts concerning the foundational research that is necessary to examine whether the hopes are justified and how curative methods with stem cells may work. The ethical worries in this context are mainly directed to the status of the human embryo. Stem cell research, at least in its contemporary state (cf. Siegel 2008), makes it necessary to destroy human embryonic stem cells. This fact is accompanied by the ethical question of the moral worth of human embryos. Are embryos simply clusters of cells not worth of making a fuss of them or are they human beings with the same human dignity as a normal adult human being?

The debate about the moral status of embryos has a long tradition in many western countries and is at issue not only with respect to stem cell research, but with respect to abortion or pre-implantation genetic diagnosis as well. Accordingly wide is the range of arguments presented in favor of the different views. Because of the long time and vast amount of paper spent on this question without any tendency towards a consensus, the debate is perceived as muddled. Therefore, it becomes more and more attractive to bring about a decision on an indirect way. Today, I want to scrutinize one such argument to see how well it works out and in how far it can help to find a decision in gridlocked debates like the one concerned with the moral worth of embryos. An indirect strategy takes the indecision of debate as its starting point and tries to show that even without a clear answer e.g. on the question of the moral status of embryos, we have to decide for one or the other option, at least as long as we cannot decide the question directly.

One argument along these lines – the one that I want to discuss today – is the so called ‘argument for precaution’. It holds that in a situation with persisting doubts regarding the status of the embryo, we should treat embryos *as if* they were human beings as long as good doubts regarding its moral worth persist, since otherwise we run danger of killing a lot of innocent human beings. This argument has become very popular in contemporary German debates. It is presented by politicians, in newspaper debates and in philosophical bio-ethical literature likewise. To give just one non-academic example, Günter Krings, vice chairman of the Christian-democratic party in the German national parliament (Bundestag), said in his speech to the members of parliament in April 2011:

“We are not allowed to take a risk when determining the beginning of human life. It is an ethical rule of prudence to decide for life in the case of doubt – in *dubio pro vita* – and not to assume a later point in time, only because it is more comfortable for approving a particular medical method. The slogan “in *dubio pro vita*” holds particularly well for an embryo in a Petri dish. It is *qua nature*, different from an embryo in womb, especially unprotected. Therefore are we, the legislators, asked to warrant safety to it” (Krings 2011; translation DD).¹

Similar positions are held by members of parliament from almost all parliamentary groups, but also by a great number of other societal actors.

II. In *dubio pro embryone*

In germanophone academic philosophy, this view is developed at length by Dieter Schönecker and Gregor Damschen in an extensive article named “In *dubio pro embryone*”. This article consists of two parts. In the first part (187-250), they develop an own argument for the prohibition of destroying embryos that combines numeric identity (i.e. of an embryo with an adult) and potentiality (i.e. of an embryo to become an adult). In the second part (250-264),

¹ „Wir dürfen bei der Festlegung des Beginns von menschlichem Leben kein Risiko eingehen. Es ist sozusagen eine ethische Klugheitsregel, im Zweifelsfall für das Leben - in *dubio pro vita* - zu entscheiden, und nicht einen späteren Zeitpunkt anzunehmen, nur weil er bequemer ist, um bestimmte medizinische Maßnahmen zulassen zu können. Dieser Satz „in *dubio pro vita*“ gilt, wie ich finde, in besonderer Weise für den Embryo in der Petrischale. Er ist von Natur aus, anders als der Embryo im Mutterleib, besonders schutzlos. Deswegen ist der Gesetzgeber, deswegen sind gerade wir besonders gefordert, ihm Schutz zu gewähren.“

this argument is complemented with an argument for precaution. Whereas the first part only aims at showing that the debate is (at least) in a stalemate situation, the second part tries to enforce a decision towards a legal prohibition of embryo use as long as we are in this stalemate situation. For that reason, it is the meta-argument in the second part that is of peculiar interest for me today.

In its general version, the argument for precaution reads as follows:

“[...] in situations with good doubts whether a being falls within in the scope of a moral norm, it has to be assumed that this is the case, if the opposite assumption and its possible positive outcomes do not stand in an acceptable proportion to the moral harm that would be caused if the [latter opposite; DD] assumption is denied” (253, translation DD).²

What we find so far – besides are very difficult phrasing – is that what is called “the argument for precaution” is not an argument at all, but a *moral rule* or *principle* that tells us what we have to do if a particular situation occurs. Therefore, I will sometimes refer to the argument for precaution as “the principle of precaution” as well.

In what follows, we shall in a first step look how Damschen and Schönecker characterize the ongoing moral debate because this provides initial situation their principle is designed for (III). Secondly, we will have a look at the arguments for the validity of the principle of precaution. After clarifying these foundational issues, we will be able to judge the argument for precaution as such (IV). In a third step, we will see how much guidance the principle gives us in debates like the one concerned with the moral status of embryos (V).

III. The initial situation in the debate about embryos

To begin with, we shall have a look at the initial situation in the debate about the moral status of embryos, as it is described by Damschen and Schönecker, because this is the situation the principle of precaution claims to have a – at least temporally – solution for. This initial situation is described as a problem of subsumption. In such a situation, it is uncertain whether a being falls in the protective scope of a norm or not. Damschen and Schönecker distinguish a

² “[...] daß in Situationen, in denen guter Zweifel darüber besteht, ob ein Wesen in den Anwendungsbereich eines moralischen Gebots fällt, davon ausgegangen werden muss, daß es sich so verhält, wenn die gegenteilige Annahme und die mit ihr vielleicht verbundenen positiven Auswirkungen in keinem akzeptablen Verhältnis zum moralischen Schaden stehen, der entstände, würde man jene Annahme nicht machen.”

weak and a strong version of the problem of subsumption. In the *weak version*, it is verified that a norm is valid, but it is uncertain whether a being falls under this norm. In the *strong version*, both is uncertain: the validity of the norm itself and whether a being falls under it. Damschen and Schönecker think that the debate about the moral status of embryos is described best as a strong version of the problem of subsumption. They “[...] assume that we are not allowed to kill born human beings and people in a reversible coma as well, but [...] we do not know why this is the case.” (252; translation DD)

My impression is that it is far from clear that the initial situation is best described as a strong problem of subsumption. The reason Damschen and Schönecker give for this assumption is that it is obscure which property of human beings it really is that establishes the prohibition of killing them and therefore it is indeterminate for which property we have to look when it comes to embryos (252). But this description clearly misses the situation of the debate. Apart from the argument from species, which assumes that the membership in the species *homo sapiens* itself confers an outstanding moral status, none of the prominent arguments in the debate assumes that embryos already possess the property in question, i.e. the property that confers and outstanding moral status to human beings. And the argument from species is widely rejected because of its commitment to an arbitrary speciesism. The other three prominent arguments – the argument from continuity, the argument from identity and the argument from potentiality assume a particular connection between an embryo and a later being that possesses the key property. In addition to that, as mentioned before, Damschen and Schönecker themselves develop an argument for the prohibition of destroying embryos that combines numeric identity and potentiality. For defending this argument, they themselves must hold the opinion that embryos do not possess the worth-conferring property in question but have a certain connection – that of numeric identity and potentiality – to a being worthy of protection. Therefore, Damschen and Schönecker not only miss an appropriate characterization of the debate in general, but they miss an appropriate classification of their own theory as well.

Since the debate about the moral worth of embryos functions well without knowledge about or agreement on the property beings have to possess for falling under the scope of a rigorous prohibition of killing them, the situation Damschen and Schönecker regard as necessary for applying their principle of precaution is not given.

Therefore, we could stop at this point and conclude that regardless in which situations the argument for precaution may or may not be helpful, in the debate at hand it cannot be applied since the initial situation it is designed for – strong problems of subsumption – is not the case.

IV. Arguments by Analogy

Leaving these problems aside, we shall now in a second step look at the arguments developed for defending the principle of precaution. Surprisingly, Damschen and Schönecker do not provide any direct argument for their principle. Instead, they only give two arguments by analogy. Both these arguments are probably designed to show that the principle of precaution is already accepted in our societies or that it is intuitively convincing.

Arguments from analogy face certain principled problems. Firstly, they have to show that analogicity exists in respect of the relevant features of the cases compared (cf. Tetens 2004: 175-77). Secondly, arguments by analogy only scrutinize the coherence of two moral practices, without justifying the practice that is used as an analogon itself. Therefore, this practice needs already to be justified itself or is in need of additional supportive arguments. So, let us now have a look whether the arguments by analogy introduced by Damschen and Schönecker can fulfill these requirements.

1. The example of a hunter

The first analogon is provided by reference to the example of a hunter. It says that a hunter is not allowed to fire at a living being that moves in the undergrowth if he is uncertain whether the beings are deer or playing children. This prohibition is meant to be valid even if the hunter's family feels the pinch of hunger and accordingly the shooting of deer would realize an ethical good of high rank. The conclusion drawn from this example is that we are in the same situation as the hunter. As long as there are good doubts concerning the moral status of the embryo, we ought to treat them in the same way as the beings in the undergrowth, i.e. abstain from killing them.

How well does this analogy work for our purpose? With regard to our second criterion – the plausibility of the analogon – doubts can be raised. Is there really an inestimable prohibition for the hunter? Or are the goods at hand goods that have to be balanced with and weighted against each other? If the children of the hunter will die if they do not get anything to eat that day, he may be legitimate in risking the life of the potential unknown children in the undergrowth since otherwise his children – the one he has a closer relation to – will die for sure.

Even if the analogon is chosen adequately and the second criterion is fulfilled, the analogy faces more fundamental problems with regard to our first criterion – the matching with regard to the compared cases. This criterion shows that the analogy is not suitable for the debate concerning the moral status of embryos. In the debate on the embryo, there is a *moral* doubt, namely whether the embryo *should* possess a moral status that forbids destroying it. In the example of the hunter, on the other hand, there is no moral doubt at all. The hunter is dead certain that he is not allowed to kill children and he does not have an intention of doing so. Rather, the doubt of the hunter is not a moral one but an *empirical* one. He knows his moral obligations but he has doubts concerning his empirical circumstances, namely whether there are children or deer in the undergrowth.

Whereas the hunter knows that it is morally out of bounds to kill children, in our case it is the moral status of the embryo itself that is subject of the debate and we do not know whether it is morally legitimate to destroy them in specific circumstances. Therefore, the example of the hunter does not provide a suitable analogon to the problems we face when debating the moral status of embryos.

2. The example of slaves

Let us now look whether the other argument of analogy works out better. The other example that Damschen and Schönecker provide for showing that a principle of precaution is already established in our societies starts from the historical fact of slavery in the ancient world as well as in the modern age. Damschen and Schönecker state that in both the eras, people of these societies uttered doubts with regard to the moral legitimacy of slavery. Therefore, they conclude: “As we today retrospectively say, people back then should have followed the principle *in dubio pro seruo*, today’s people should say: *In dubio pro embryone*” (251; translation DD, italics in the original).

It is not all too easy to say whether this example fulfills our second criterion. This very much depends on the question whether the moral condemnation of slavery is thought as persisting over historical and cultural variances and whether the existence of public doubts changes the quality of an action. Especially the question of the stability of norms over different cultures is a contested one in moral philosophy. Since we cannot decide this longstanding debate today, we should grant this point to Damschen and Schönecker and assume that slavery was wrong

at every point in history when at least some people in the respective societies uttered doubts on the moral legitimacy of slavery.

Thereby, we can pass over to the first criterion. As soon as we assume that slavery was wrong at every point in time, we face a serious problem for the suitability of our analogon: Whatever justifies the outstanding moral status of human beings – be it the ability to form life plans and to lead the life as a person, be it some sort of recognition, be it the ability to perform certain abilities or the possession of certain properties – there is no doubt that slaves possessed these abilities as they are ordinary human beings. Furthermore, slaves themselves are able to claim recognition. So, if it is true that slavery was wrong in our historical examples, the behavior of our ancestors cannot be described as a certain pattern of behavior in cases of uncertainty and therefore cannot serve as an analogy that introduces principles for the behavior in cases of uncertainty. Our ancestors could have been certain that a slave possesses the features we today think of as conferring an outstanding moral status to human beings. The failure in these societies was the missing recognition of certain properties as conferring an outstanding moral status.

V. Application of the argument for precaution

As we have seen so far, the principle of precaution faces fundamental problems: Firstly, the initial situation it is designed for is not the situation we have to deal with in the contemporary debate regarding the moral status of embryos and secondly, the arguments given for the general validity of the principle do not stand up an analytical investigation. With this result it is more than clear that we have to discard the principle of precaution at least in the version developed by Damschen and Schönecker if no further foundation for this principle can be given. Let us nevertheless finally have a look on how Damschen and Schönecker think of applying the principle in ethical debates. As a reminder, the principle of precaution states that

“[...] in situations with good doubts whether a being falls within in the scope of a moral norm, it has to be assumed that this is the case, if the opposite assumption and its possible positive outcomes do not stand in an acceptable proportion to the moral harm that would be caused if the [latter opposite; DD] assumption is denied” (253, translation DD)

For the consequence of treating a being as if it falls in the scope of a moral norm, two things have to be the case. Firstly, there has to be not just some doubt or somebody uttering doubts, but there has to be *good* doubt. Secondly, the possible outcomes have to be weighed against each other. Therefore, Damschen and Schönecker have to give an account of what good doubts consist in as well as of an adequate way of weighing of possible outcomes.

With an eye on the first, Damschen and Schönecker themselves admit that without criteria that designates doubts as entitled as opposed to mere doubts, their approach becomes pointless. Nevertheless, it is hard to find exact criteria that helps us distinguishing good from bad doubts in their approach. They mention “that these doubts are so strong that opponents must admit in a more than theoretical sense that their own position might be wrong.” (255; translation DD) These strong doubts are opposed to universal skeptical doubts (255). But besides that, Damschen and Schönecker do not provide us with a more detailed description or criteria how we get to know that opponents have to admit a more-than-theoretical fallibility of their position. For that reason, the account faces difficulties in determining when good reasons are at hand or when doubts can be neglected because they are not entitled.

The second requirement says that the possible outcomes have to be weighed against each other. With regard to this weighing, Damschen and Schönecker confess:

„How can doubts on the one hand and the weighing of goods on the other hand set off against each other? The answer is: We do not know and presumably nobody knows.” (258, translation DD)

With this final move, Damschen and Schönecker reduce their whole theory to absurdity. They admit on the one hand side that they do not have an idea how the process of weighing – that is, one of the two requirements for treating a being as if it falls under a particular norm – can work out. On the other hand, they lose track of their own account since – as quoted above – they talk about balancing doubts with the weighing of goods, which does not make sense at all because of the categorical difference between doubts on one side and weighing of goods on the other. Since they originally wanted to weigh possible outcomes they must have been confused by their own theory.

To sum up, we have seen that the principle of precaution cannot be applied to any case at all since both of its requirements lack a manageable determination. We are left alone in finding out which doubts are 'more than theoretical' and therefore good and we do not know how to

weigh possible outcomes against each other. Therefore we do not know when we have to treat a being as if it falls under the scope a moral norm as a step of precaution.

VI. Conclusion

With that said, let me finally conclude our findings. We have scrutinized the so called “argument for precaution” in three steps. In a *first step*, we looked if the initial situation the argument is designed for really describes the debate that is taking place and found out that the relevant features of the debate about the moral status of embryos are missed. For that reason, the argument for precaution cannot be applied on this particular debate. In a *second step* we analyzed the arguments that Damschen and Schönecker give in favor of founding the principle of precaution. Both arguments by analogy – the example of a hunter and the example of slavery – failed to establish this principle, which means that it lacks general justification. In a final *third step* we saw that even if we ignore these problems of justification in the two previous steps, we cannot bring the principle of precaution to bear, since both requirements for applying it lack the needed clarity for making the principle manageable.

These findings show that it is difficult to make good sense of this very popular and widespread principle. In its best formulation in German philosophy, it clearly collapses. We may come to realize that difficult debates In biomedical ethics may not find a solution on an easy and indirect way but have to be developed in all its internal complexities.

VII. References

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