

Moral status of the embryo. Clinical and legal consequences

Sorin Hostiuc

MD, National Institute
of Legal Medicine,
Bucharest, Romania;
Lecturer,
"Carol Davila" University
of Medicine and Pharmacy,
Dept. of Legal Medicine
and Bioethics,
Bucharest, Romania

Correspondence:
Sorin Hostiuc, MD
e-mail: soraer@gmail.com;
sorin.hostiuc@legmed.ro

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Abstract

The Kantian theory states that the moral status is a fundamental attribute of any moral agents as respect is always directed towards persons and never toward things. By persons he understands moral agents, or beings have moral duties and obligations. Warren defines moral status as to be morally considerable, or to have moral standing. It is to be an entity towards which moral agents have, or can have, moral obligations. If an entity has moral status, then we may not treat it in just any way we please. Moral status is essential for the ethical analysis of many modern bioethical issues including in vitro fertilization, cloning, stem cells, post-human ethics, and so on. The purpose of this article is to succinctly analyze the concept of the moral status of the embryo, and to discuss two main clinical consequences.

Keywords: moral status, embryo, conferred moral status, intrinsic moral status

Introduction

According to Warren, “to have a moral status is to be morally considerable, or to have moral standing. It is to be an entity towards which moral agents have, or can have, moral obligations. If an entity has moral status, then we may not treat it in just any way we please”⁽¹⁾. Many ethical issues related to reproductive ethics have as a center theme the issue of the moral status of the embryo, as a positive identification of such a status i) devolves upon us a series of moral obligations limiting the way we can freely interact with the telos of the embryo, and ii) grants the embryo a series of moral rights⁽²⁻⁶⁾. There are two main topics of discussion we will focus upon in this article - how can we establish when an embryo acquires a moral status, and what are the clinical implications of the absence or presence of this status.

Regarding the moment when an embryo acquires a moral status, there are more than a few theories. The Kantian theory states that the moral status is a fundamental attribute of any moral agents. According to Kant “respect is always directed towards persons and never toward things”⁽⁷⁾. By persons he understands moral agents, or beings having moral duties and obligations⁽⁸⁾. Moral agents, according to the Kantian theory, are represented by normal adults, capable of self-governing in moral issues or autonomous⁽⁹⁾. Autonomy contains two fundamental elements: i) a lack of external controls, telling us what morality is, and ii) through self-governance we can control ourselves⁽⁹⁾. The Kantian theory grants all adults, irrespective of their gender, race or other discriminants, full autonomy, a full moral status. However, as it links it to rationality, it considers all persons not capable of moral reasoning to be outside this concept, included here being infants, embryos, animals, or persons with mental/intellectual deficits. Therefore, according to this theory, embryos do not have a moral status, causing us no to have direct moral obligations toward them (we do have indirect moral obligations, however, but not causally linked with the presence of their moral status).

To the other end of the spectrum there are authors like Taylor considering that all beings, including bacteria, try to maintain their existence and reproduce, subsequently having a telos; as having a purpose for living is an attribute of moral agents, all organisms should have a moral status⁽¹⁰⁾. This biological approach is extremely useful when analyzing issues related to animal ethics. However it does not bring significant additional data into the analysis of the moral status of the embryo.

Moral status of the embryo

The genetic humanity theory (i.e. the sanctity of life theory) suggests that a full moral status is associated with human deoxyribonucleic acid (DNA). Therefore, any living structure having human DNA has a full moral status, including the human zygote⁽¹¹⁾. There are at least two problems with this theory: first it links a purely human morphological characteristic with a moral property (an anthropocentric view, that only limits the morality to a very specific, and un-modifiable set of biological beings), and secondly does not address the issue of totipotency - the first dividing human cells can lead to one or more persons. Therefore associating full moral status with an egg cell in fact causes us to link an attribute unique for each person (the moral status) with an uncertain number of individuals⁽¹²⁾.

Implantation theory considers that moral status is associated with the process of implantation “the decisive moment of humanization”⁽¹³⁾. Noonan affirmed that starting from conception, human being contain all necessary and sufficient qualities for a full moral status⁽¹³⁾. However, the implantation occurs during a period of time, and not in a definite moment. Moreover this theory suffers the same problem as the genetic humanity theory, as it does not take into account the totipotency problem. One could argue that the moment of acquiring the moral status could be the end of implantation, as this can be more specifically pointed. Once this process happens, the woman is considered clinically pregnant, the human

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Table 1 Principles shaping the moral status (adapted after 1)

Principle	Definition
Respect for life	We should not destroy living beings without a good reason (that does not violate other moral principles)
Anti-cruelty	Sentient beings should not be killed, or made suffer, unless there is no other feasible way to reach the goal in mind that (1) is consistent with other moral principles and (2) is vital to human beings
Agent's rights	Moral agents have equal basic moral rights
Human rights	Within the limits of principle 3, sentient human beings have the same basic moral rights as do moral agents
Interspecific	Within the limits of principles 1-4, non-human members of mixed social communities have a stronger moral status than the one based on sentience only
Ecosystemic	Living beings belonging to species that are important to their ecosystems and are endangered by human activities, have, within the limits of principles 1-5, a stronger moral status than the one based on their intrinsic properties
The transitivity of respect	Within the limits of principles 1-6, and within the limits of feasibility and moral permissibility, moral agents should respect one another's attributions of stronger moral status to certain entities than the one based on their intrinsic properties

chorionic gonadotropin hormone begins entering the blood-stream and the plethora of morphological and physiological changes associated with pregnancy appear to be noticeable.

The embryogenesis theory states that moral status is achieved once the human embryo is distinctly unique morphologically from other animal embryos. This moment is correlated with the end of embryogenesis, which occurs in humans at about eight week's intrapartum. Once fetal life begins, we can consider that the moral status is present.

Singer's theory links moral status to sentience (i.e. a state of minimal consciousness in which a being is able to have subjective perceptual experiences), "if a being is not capable of suffering, or of experiencing enjoyment or happiness, there is nothing to be taken into account. So the limit of sentience... is the only defensible boundary of concern for the suffering of others. To mark this boundary by some other characteristic like intelligence or rationality would be to mark it in an arbitrary manner"⁽¹⁴⁾. This theory can be applied to the analysis of the moral status of the embryo, as during organogenesis it becomes sentient (i.e. begins feeling pain, sensing music and so forth).

However, establishing the exact moment when the fetus becomes sentient is much more difficult in practice, as it cannot communicate to us directly. One possibility is to see when, during organogenesis, the foetus has the morphological structures able to sense various sensations like pain. According to Hickey and Anand, pain perception is associated with the development of thalamocortical connections. Afferent neurons in the thalamus have axons going towards the cerebrum before midgestation; these fibers wait just below neocortex until the completion of migration and development of dendrites of the cortical neurons, with which they establish connections between

weeks 20-24 intrapartum⁽¹⁵⁾. Therefore, by using this criterion, we can infer that sentience, and subsequently moral status is present in all embryos aged 20 weeks or older. The main limitation of this theory is its wide applicability - if all sentient beings have moral status, then we would have moral obligations in relation to all sentient beings, including insects⁽⁸⁾, unicellular organisms or even vegetal beings⁽¹⁶⁻¹⁹⁾.

Noddings's theory considers that morality is linked to the capacity to care for and about one another⁽²⁰⁾ and that we have moral obligations to other humans we care for and even if they are not (yet) capable of reasoning, they can still respond to our care.

Warren tried to combine most criteria for moral status in a single form, and developed a set of seven main principles that shape its construction, presented in Table 1.

From the above statements, the theories regarding moral status are extremely heterogeneous, and often conflicting. To complicate things even further some authors agree that there are four types of different moral statuses:

- Complete, giving the moral agent all the rights and obligations associated with this property.
- Incomplete, giving the moral agent all rights or some of the rights associated with this property and some or no obligations associated with it.
- Intrinsic, giving agents moral status based on their intrinsic value, or potentiality⁽²¹⁾. The most important intrinsic value causing beings to be considered moral agents is dignity. Aquinas for example stated that "dignity means the goodness a thing possesses because of itself; utility, because of another thing". Kant considered that there are two kinds of entities, each having a proper value. However, only entities which are ends in themselves (human beings) have intrinsic value⁽⁷⁾, that is dignity⁽²¹⁾. Another important intrinsic value is the potentiality to

become a human being; if an entity has this potential, it may be considered intrinsically a moral agent⁽²²⁻²⁴⁾.

■ Conferred moral status, an instance in which beings are awarded a moral status based on certain characteristics or properties. For example an embryo, or a foetus, can have a conferred moral status, based on the potentiality of becoming a human being, or on the bond between it and the parents, or even on the grounds of the general aspects regarding morality of the society the parents live in.

In clinical practice, defining when the embryo acquires a moral status, and what kind of moral status he acquires has a plethora of consequences, from which two will be analyzed below.

The first one links the moral status on the characteristic of the embryo to be recognized as a human being, with rights and at least the potentiality to have obligations. We have different obligations in relation to the type of beings we interact with - for example with plants we have the duty not to endanger their existence as a species, with animals we have a duty not to act with cruelty, to human beings - we have all the legal and moral obligations derived by our apurtenance to a certain society or country. If, and when we consider the embryos to have moral status, we should start consider them as humans, and all medical interventions we would be allowed morally to perform on a non-moral agents, should be reanalyzed in this different set of coordinates. For example, it might be allowed to perform abortion on an embryo that is not a moral agent, but it might not be if he gains this property⁽²⁵⁾.

The second one is the type of moral status an embryo has. Here there are more hypothesis, of which the most useful is the one considering the gradual appearance of the moral status. This hypothesis considers that a complete moral status is gained only during birth, moment in which the foetus legally becomes person (he/she gains all civil rights associated with the property of being the citizen of a certain country). Before that, we confer a moral status to the foetus, as a i) means of protecting him from potential abuses and ii) respect for the potentiality of becoming a human being/moral agent. The moral status is almost

complete, but the foetus has lesser rights compared to a newborn. Normally this stage can be subdivided in two periods - after and before the appearance of the sensitivity (see the Singer's theory). After the appearance of the sensitivity the foetus has an almost complete moral status, and his rights are protected in almost any instance, with one significant exception - if the life of the mother is put in severe risk by his/her development, the right to life and health of the mother has precedence. This allows abortion in later stages of the pregnancy if the mother is put in direct, significant risk, by the pregnancy. The second period is between the appearance of sensitivity and the end of embryogenesis. In this period the moral status of the embryo is reduced, but not absent. The beneficence of the mother has precedence over the non-maleficence of the foetus, but this precedence is not unrestricted. The limits are usually imposed legally - for example, the mother can only make an abortion until a certain week of gestation. If she does not take the decision to discontinue the pregnancy until that legally binding period, she loses the right to do so. During embryogenesis most authors consider that the moral status is absent, making the beneficence of the mother to have almost unrestricted precedence over the rights of the foetus; however, there are limits imposed by the potentiality to become human of the embryo, limits that are however governed by a different principle, called "respect for the embryo", initially developed by Warnock committee^(25,26). In the pre-embryonic stage we cannot talk about the moral status, or even about respect for the embryo. The only limits are legal, and are usually associated with unethical acts like creating embryos for research, or cloning, or creating embryos for the harvest of stem cells.

Conclusion

The moral status of the embryo is a continuously evolving concept; knowing it and applying it correctly in clinical practice is of a paramount importance in obstetrics, as it minimize the possibility to act unethically in the relation between physician and the future mother. ■

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