

Opinion

As I See It...

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Two or three times each year some new technological medical issue grabs the attention of the national media. Then we are repeatedly told that our science and technology have outrun our ethical sense, and that our only recourse is to turn to the law to save us from moral chaos. When regional, racial, religious, and economic pluralisms come to dominate all fundamental issues in the life of society, the resultant centrifugal forces threaten to tear all communities apart. Instinctively, we turn to the law for help. We do this, perhaps, because the law is fundamentally concerned with procedural rather than substantive issues. We frequently hold the illusion that when we cannot agree on material questions, we can at least find a way to continue some semblance of community by respecting procedural principles.

There is, of course, some fundamental truth in this notion. But we must be careful as a society not to expect too much of the law. We are discovering that in the same way technology often promises more than it can deliver, the law also seems to promise more than it can produce. The illusion that technology can save us in our most fundamental human needs is analogous to the illusion that the law can save us from our moral chaos.

Take the recent publicized case in Maryville, Tennessee, of those seven frozen specks of pre-embryonic human life. Mary Sue and Junior Lewis Davis-- she, 28, a service representative for a boat company, and he, 30, a refrigeration technician-- had tried unsuccessfully for nine years of their marriage to have children. But Mary

Sue was rendered permanently unable to conceive normally by five tubal pregnancies requiring surgery. Like so many other Americans desperate to bear their own genetic offspring-- thereby assuring their own immortality? thereby establishing their own sexual and personal identity? thereby demonstrating their human worth?-- Mary Sue and Junior turned to technology to save them. They went to the Fertility Center of East Tennessee at Knoxville to seek help through in vitro fertilization.

In vitro fertilization is indeed for many infertile couples as it was for the Davises, the last hope to have a child carrying the genes of each parent. There is nothing inherently unethical about the use of this procedure. But again, it is technology that promises hopeful couples more than it often can deliver. It is an expensive, stressful, invasive, long-shot procedure. First, the woman is given superovulation hormones to induce her ovaries to release several ova during her monthly cycle. (Nobody knows for sure the long-range implications of such treatment). At the right moment, these ova are surgically extracted-- with the accompanying risks to the woman-- and placed with the husband's sperm in a petri dish.

When the ova are fertilized and begin to grow and divide, the couple and the technologists have to make a crucial decision. Given the low "success" rate of implanting fertilized ova into the uterine wall, they must decide how many of the "pre-embryos" to place in the woman's uterus-- hoping that at least one will grow and develop into a normal fetus. The decision is usually

made to use three to five. Sometimes, therefore, pregnancies develop with twins or triplets. The largest number of successful implants on record has been five. Much more often, the attempt completely fails or ends in miscarriage. In all this, the woman is on an emotional rollercoaster of expectation, disappointment, hope and often disillusionment. Many marriages cannot survive such strain.

But what about left-over fertilized ova, or as they are called, "pre-embryos?" These can, of course, be frozen, and

"Specks of Life"

used later for another try at pregnancy, without putting the woman at the repeated risks and costs of superovulation and surgery. That is what the Davises had chosen. They had tried the in vitro procedure six times. Each time it had failed. They had seven embryos frozen in liquid nitrogen at the Fertility Center to be used in the seventh or eighth attempt.

But the Davises decided to call it quits on their marriage. They entered into divorce proceedings. What is to be done with the frozen embryos? And who should decide? As a society with no fundamental moral consensus to guide it, we turned to the law to answer these questions.

The Davises went to court. Mary Sue wants to use the embryos to try again to have a baby. She argues that this is her last and best chance to be a mother, and that she should not have to go through the expensive and dangerous procedures again with another man. She contends that she

would rear her child as a single parent without Junior's help or support.

But Junior grew up in a broken family, and he thinks that no child should be reared without both parents. He feels that his fundamental reproductive rights would be violated if Mary Sue or any other woman should give birth to his biological offspring without his consent. He does not want the embryos destroyed, but he does not want them implanted without his consent.

So we turn to the law. This is a case of first impression. And it shows the limitations of the law in giving us clear moral and ethical guidance. This case also suggests the limitations of technology in addressing fundamental human problems that INVOLVE technology but have radically significant dimensions.

The fundamental human issues raised by this case admit of no technological solution; they equally admit of no self-evident and equitable legal solution. Some people argue that the pre-embryos should be viewed as property, subject to the usual property divisions that mark the settlement of bitter divorce fights. But there is something profoundly counter-intuitive about conceiving of even specks of potential human life merely as "things" to be bought, sold, divided, like any other property.

Others want to invoke traditional family law as it governs abortion, adoption, and child custody. *Rowe vs Wade* gave the mother unilateral choice to seek an abortion, despite any objection from the father; but surely the choice to abort a fetus against the father's will can be distin-

guished morally and legally from the choice to bring a child into the world against the father's will.

Equally problematical issues are raised in adapting child custody and adoption laws to a situation so radically different from anything anticipated by these laws. Recently an Australian court gave the frozen embryos of a couple killed in a plane crash to another infertile couple who remained anonymous. But in the present case, the "parents" are each still living!

Some insist that these specks of living matter that have the potential to become human life should be destroyed. Others want to use them for experimental purposes, in basic embryonic research. But neither of these options meets with widespread public approval.

What we have here is a human dilemma that admits of no fully persuasive ethical resolution. We cannot hope ever to return to a general public consensus concerning the FUNDAMENTAL NATURE OF THESE SPECKS OF LIFE... even assuming that once we might have had such an agreement. So we turn to the law. We ask the law to save us. Perhaps this is the only hope we have for ordered liberty-- that in a society with no fundamental common moral commitments, we must learn to respect the autonomy of others. And when these autonomies clash, we must accept that power of law to establish procedures that protect us

from chaos and brute power. But we must not expect the law to remove moral ambiguity; or to reduce the irreducible tragedy at the heart of mortal existence.