SAVING SEVEN EMBRYOS OR SAVING ONE CHILD? MICHAEL SANDEL ON THE MORAL STATUS OF HUMAN EMBRYOS

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ABSTRACT: Suppose a fire broke out in a fertility clinic. One had time to save either a young girl, or a tray of ten human embryos. Would it be wrong to save the girl? According to Michael Sandel, the moral intuition is to save the girl; what is more, one ought to do so, and this demonstrates that human embryos do not possess full personhood, and hence deserve only limited respect and may be killed for medical research. We will argue, however, that no relevant ethical implications can be drawn from the thought experiment. It demonstrates neither that one always ought to let the embryos die, nor does it allow for any general conclusion concerning the moral status of human embryos.

1. A THOUGHT EXPERIMENT

Philosophical thought experiments hardly ever make it into a greater public arena. Most of them are quite obscure, and only very few are of broader interest. However, in spring 2001 there was a heated and public discussion in Germany about such a though experiment after Reinhard Merkel, a professor of legal studies at the University of Hamburg, had introduced it to a wider audience in the high-circulation weekly *Die Zeit* (Merkel, 2001). Only a few readers, though, realized that the thought experiment actually goes back to an article published in the *Hastings Center Report* by George Annas who in turn took up a suggestion by Leonard Glantz: "If a fire broke out in the laboratory where these seven embryos are stored, and a two-month-old child was in one corner of the laboratory, the seven embryos in another, and you could only save either the embryos or the child, I doubt you would

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have any hesitancy in saving the infant" (Annas, 1989, p. 22). Recently, Michael Sandel (2003) has reformulated this thought experiment: "Suppose a fire broke out in a fertility clinic. You had time to save either a five year old girl, or a tray of ten embryos. Would it be wrong to save the girl?" (pp. 9–10).[1] As Merkel points out in his version of this thought experiment, one should assume that the child is already unconscious to block any distorting considerations about the baby feeling pain etc. Also, Merkel is right in saying that the number of embryos is irrelevant; so it could be seven, seven hundred or seven thousand, it does not matter. It does not matter because according to Annas, Merkel, Sandel, et al., the normative conclusion would always be the same: "Saving the infant, however, acknowledges that the child is not equated with the embryo" (Annas, 1989, p. 22). Similarly, Sandel uses the thought experiment to argue against a view he calls the "'equal moral status' view," i.e., "to attribute full personhood to the embryo" (p. 9).

Since Annas makes little of the thought experiment, and because Merkel's position is not known beyond Germany, we will concentrate on Sandel's version of the thought experiment which actually puts it in the context of considerations about the moral status of human embryos.[2] Sandel's position is all the more interesting since he is a member of the President's Council on Bioethics. In this council, the thought experiment was used as an argument against the position that embryos must not be used for stem cell research.

We will argue, first, that Sandel has not made up his mind about the epistemological status of his thought experiment, and that, second, *nothing* morally relevant follows from this thought experiment; despite its initial plausibility, no valid moral conclusion can be drawn from it. Note that the purpose of this article is not to demonstrate directly what the moral status of human embryos actually is, and it will also not discuss the numerous ethical, epistemological, and ontological problems that arise in the debate about the moral status of human enbryos.[3] This paper is limited in scope; it is primarily critical.

2. THE EPISTEMIC ROLE OF THE THOUGHT EXPERIMENT

Sandel begins with the claim that there "are three possible ways of conceiving the moral status of the embryo—as a thing, as a person, or as something in between" (9). It is not entirely clear what he means by 'something in between.' In any event, he seems to hold that the human embryo is not merely a thing, and even if it were, one could not conclude that it did not deserve any respect. For personhood, Sandel argues—quite correctly, we think—is not a necessary condition for something to deserve (at least some) respect. However, he attacks the view which he calls the 'equal moral status' view. According to this position, embryos have to be attributed "full personhood" (p. 9). What that ('full personhood') really means also is not clear. But it is Sandel's strategy to play out the "full implications" (p. 9) of this view and then to show by applying a kind of *reductio ad absurdum*—we call it later an *ethical modus tollens*—that this view is untenable. Thus, he attempts to demonstrate that if embryos had full personhood, we needed to save those ten

embryos rather than the child, but that actually we must not save the embryos which is why it cannot be true that embryos have full personhood.[4]

Let us now have a closer look at the thought experiment. We are to suppose that a fire broke out in a fertility clinic and that we only had time to save either a five year old girl, or a tray of ten embryos. The question then is: Would it be wrong to save the girl? Clearly, Sandel suggests that not only would it not be wrong to save the girl, but rather it would be wrong to save the embryos and let the child die. This might be true or false, but the first question is: What epistemic role does this thought experiment have? Is Sandel saying that we gain ethical insight about the question whether embryos have 'full personhood' by thinking about the thought experiment inasmuch as it elicits some kind of *moral intuition* such that we just know (*see*) that saving the embryos would be wrong and hence know that embryos are not persons? Or is the thought experiment just an *illustration* of an ethical insight that is grounded in some non-intuitive argument? Since Sandel does not provide a non-intuitive argument one has to assume that in some sense the thought experiment *itself* is the argument. But that in turns means that Sandel bases his conclusion that embryos do not have full personhood and, *a fortiori*, his claim that they may be killed for medical research, on a moral intuition. There is, we agree (though we cannot show this here), nothing wrong with relying on moral intuitions simply because we have to. But one should methodologically be clear about this, and Sandel is not.

Sandel bases his conclusion on a moral intuition because he really avails himself of what might be called an *ethical modus tollens*. By this we mean arguments of the following form:

1. If some ethical theory *x* is true, the action *y* is obligatory.
2. Action *y* is not obligatory.

Therefore,

3. Ethical theory *x* is not true.

Of course, this argument-form is valid. But it is also obvious that the soundness of actual arguments that are based upon this argument-form depends on the truth-claim in the second premise.[5] The thing is that the truth of this premise is taken for granted, i.e., taken as *intuitively true*. It is just assumed as (self-)evident that some actions are obligatory, prohibited, or permissible. But this assumption itself, the truth of the second premise itself (i.e., the truth of a basic moral or ethical proposition), is taken for granted.

Here is Sandel's ethical modus tollens:

1. If the embryo has full personhood, it is obligatory to save ten embryos rather than a child if a fire broke out in a fertility clinic and we had only time to save either the embryos or the child.
2. But it is not obligatory to save the embryos.

Therefore,

3. the embryo does not have full personhood.

Sandel's two other arguments run just like that:

1. If the embryo has full personhood, we have to punish harvesting stem cells as severe as we punish any murder of born humans.
2. But we ought not punish harvesting stem cells so severely.

Therefore,

3. the embryo does not have full personhood.

And then again:

1. If the embryo has full personhood, we must regard the natural death of embryos due to miscarriage as morally equivalent to infant mortality.
2. But we ought not regard the natural death of embryos due to miscarriage as morally equivalent to infant mortality.

Therefore,

3. the embryo does not have full personhood.

We do not submit that it is improper to refer to basic moral intuitions. As a matter of fact, we believe that we cannot do away with moral intuitions in moral philosophy, and hence not with the ethical modus tollens either. The ethical modus tollens is indeed indispensable and inevitable. Ethics has to start and to end somewhere, and there is no *Münchhausen-trick* that somehow allowed us to prove what is right or wrong without already presupposing that we have ethical insight. But again, one needs to be clear what this means and implies, and at least in his paper Sandel does not elaborate his understanding of intuitions.

3. THREE ALTERNATIVE VERSIONS OF THE THOUGHT EXPERIMENT

How important it is to reflect on the power and limits of moral intuitions will show if we reflect upon other versions of the thought experiment. In Sandel's thought experiment, it is tacitly assumed that we will *always*, under *all* circumstances and quite independend of the context, prefer to save the child rather than the embryos. But is this really true? Let us consider other versions of the thought experiment.

Suppose there is a young man who is, as far as he knows, the last survivor of a devastating catastrophe; he is the last living member of the species homo sapiens sapiens. Let us also suppose that in this version of the thought experiment the child is a boy, and let us also suppose that the young man can either save this boy or 100 embryos. These embryos, let us further assume, could develop into adult members of the species homo sapiens sapiens, namely not only boys, but also girls (for there are already artificial uteri and the young man could then raise these children). If the man saves the child, the human species will be extincted; if he saves the embryos, however, there is a good chance that mankind will survive. How is the young man to decide? We actually believe that his duty to save mankind overrides his duty to save the child (provided there were such a duty at all).[6] However, that is not the

point. The point is that in such a case one has to admit that it is, at least, *not self-evident* whether the child should be saved rather than the embryos. This has two implications: First, it is not intuitively clear that if one either can save a child or embryos one ought to save the child. Second, it is clear that even if we all agree that one ought to save the embryos and hence mankind, this decision, in and of itself, does not imply that the moral status of the child is such that it may be killed for medical research.

Or how about this version: The rescuer who rushes into the fertility clinic is actually the biological father of the two embryos in danger to burn; these embryos are supposed to be implanted the next day into his wife's uterus. Both of them have long been looking forward to this, they already have chosen names for their embryos and have established an emotional contact with their descendants, and the embryos are known to be genetically healthy. (In the meanwhile, artifical fertilization has made such great progress that the chance of these embryos developing into healthy fetuses is just as good as that of naturally conceived embryos.) Is it really 'intuitively clear' that the father must let his embryos die in order to save the child? Would we all blame him for saving the embryos? What 'intuition' do 'we' have? Again, it is far from *self-evident* that the child should be saved rather than the embryos. And whatever our decision might be, nothing follows from this regarding the question whether embryos may or may not be killed for medical research.

Obviously, many cases and situations can be construed as that what appeared to be intuitively clear (the child is to be saved, the embryos must die) is not so self-evident, after all. Here is another version worth reflecting upon: Let there be a tray of ten embryos on the one side of the room, but instead of a child, let us assume there is (for some reason) a mortally ill and unconscious woman on the other side who we know will only live for a day or so. So again we ask: Is it intuitively clear that we must let the embryos die and save the woman?

4. CONCLUSIONS

So what follows morally from the thought experiment? Well, nothing, really. According to Sandel, our reaction to the thought experiment is to rescue the baby rather than the embryos, and this allegedly proves that human embryos do not have full personhood, which in turn justifies, following Sandel, the conclusion that it is morally permissible to kill human embryos for medical research. First, however, it is by no means *self-evident* that we always really react to this thought experiment in the way Sandel suggests (saving the child and not the embryos)—or *ought* to react, for that matter. With regard to each of the three versions of the thought experiment we presented, there is good intuitive evidence to believe that most or all of us would rescue the embryos rather than the born human—or *ought* to, for that matter. In these versions of the thought experiment the embryos rather than a born human being have to be rescued, and still no one would reasonably argue that the born human being (therefore) does not have full personhood. It is only in *these* situations that embryos, babies, or mortally ill humans deserve less protection

because they are embryos, babies, or mortally ill human, respectively. Nothing can be inferred for other situations. (It is, by the way, one thing to *actively* kill human embryos to conduct research with them, and quite another to be in a tragic situation in which only embryos or whoever can be saved.)

Second, even if Sandel's arguments *were* sound, they would not warrant the conclusion he draws, to wit, that "stem cell research to cure debilitating disease, using six days old blastocysts, cloned or uncloned, is a noble exercise of our human ingenuity to promote healing and to play our part in repairing the given world" (p.]10). On Sandel's account the embryo has a moral status that is apparently *not* sufficient to pay it the amount of respect that is sufficient not to kill it for the purposes of medical research. But how does Sandel know this? Even if Sandel were successful in showing that embryos do not have full personhood—hence not an 'equal moral status'—he still needed to demonstrate that killing them for stem cell research is morally permissible. But from the alleged fact that embryos do not have full personhood one cannot jump to the conclusion that they may be killed for medical research. That conclusion would only be valid if it had been shown that full personhood is a necessary condition for a moral status that renders protection from being killed for medical research. But Sandel himself denies that personhood is such a necessary condition.[7] He has offered no argument, no criterion by strength of which we would be able to determine when something or someone does have such a low moral status that it might be killed for medical research. From the fact that someone or something is not a full person it simply cannot be concluded that he, she, or it may be killed for medical research, just as one cannot imply from the fact that someone or something must not be killed for medical research that he, she, or it is a full person. At least this does not go without saying. But Sandel suggests it does because this is the underlying assumption of his argument.

The crucial question to answer here is not what the general moral status of human embryos is (whatever such a 'general' status might be), whether they are full persons, or whether they have the same moral status as we do. Even if embryos do not have the same moral status as we do, they might be due such a great amount of respect that we must not kill them for medical research. So the question really at stake simply is: Is it permissible to kill human embryos in order to conduct stem cell research?[8]

So even if, in fact, the thought experiment could show that in such a situation we would always react (or ought to react) in the way suggested by Sandel, nothing could be inferred from it with respect to the general moral status of human embryos. Just because a human being is mortally ill, it has not lost its personhood, and the fact that a human being is mortally ill does not give anyone the right to exploit it for medical reseach. Certainly, we have not proven here that embryos possess full personhood. But from the alledged fact that they rather than the child have to die in a burning lab, it does not follow that they do not, and even if they did not, it does not follow that they may die for medical research. Let's bid farewell to this kind of thought experiment.

ENDNOTES

1. Plain numbers in parenthesis refer to the article by Sandel, 2003.

2. For an analysis of Merkel's thesis cf. Damschen and Schönecker 2003b.

3. We have tried to show elsewhere (Damschen and Schönecker 2003a) that killing embryos for stem cell research is morally not permissible. Using an argument from potentiality, we were neither dependent on a concept of personhood nor on a general definition of what a 'moral status' is.

4. Later he offers two similar arguments that come to the same conclusion.

5. One gets analogous argument-forms in combination with deontic concepts such as "prohibited" and "permissible"; hence there need not be a negation in the second premise.

6. Cf. Jonas's imperative that "there ought to be humanity" (Jonas, 1979, p. 91, our translation).

7. "Personhood is not the only warrant for respect" (p. 9). If personhood were a necessary condition for deserving respect, Sandel could not consistently believe that "we consider it a failure of respect when a thoughtless hiker carves his initials in an ancient sequoia—not because we regard the sequoia as a person, but because we consider it a natural wonder worthy of appreciation and awe" (p. 9).

8. Again, it is not the purpose of this paper to answer this question. It is only our intention to prove Sandel's argument to be untenable.

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