

人類胚胎的法律地位： 為何人類胚胎不應該是權利主體？*

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時下有關胚胎的論述，往往混淆了保護人與保護生命的差別：保護胚胎不必然意味著必須將胚胎視為人，賦予其等同於人的保護。相對地，不將胚胎視為人，也不意味著不保護胚胎。面對這些論述，本文希望達成的結果有三：首先，本文希望釐清保護胚胎與尊重生命，不必然需要使胚胎具有權利主體的地位。其次，本文希望說明，即使胚胎在哲學討論上具有道德地位，何以不應該以權利主體的方式予以保護。第三，透過這個討論，重新認識權利主體這個概念的制度意涵。

本文主張，由於胚胎發展階段有限，沒有感覺的能力，也沒有理性的能力，縱使因為其具有生命，且受到許多人的重視，胚胎的道德地位有限，在法律上也不適合將其視為權利主體，賦予其與其他權利主體平等的地位。在此前提下，本文因此認為，任何主張胚胎「在法律上」應受「等同於人」保障的論述，就其實質，只是出於對於胚胎的道德情感而「賦予」胚胎法律上一定的保護，而不是出於對於胚胎本身權利主體的地位所「衍生」的保護。同時，由於權利主體地位具有鎖定制高點的效果，也不宜以權利主體地位保護胚胎，以避免掏空權利主體地位的內涵，或妨礙胚胎相關知識的繼續深化，以及相關議題在多元社會的思辯。

關鍵詞：人類胚胎、人類胚胎道德地位、人類胚胎法律地位、權利主體、墮胎、胚胎研究

The Legal Status of Human Embryos: Why Human Embryos Shouldn't Enjoy Legal Personhood

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ABSTRACT

Current discourse about the necessity of protecting human embryos often blurs their difference from human lives: the need to protect human embryos does not necessarily mean that one needs to protect them as human lives. Vice versa, an argument that embryos are not human lives does not mean that embryos deserve no protection. Responding to these confusions, the purpose of this article is three-fold: first, I argue that protecting human embryos and respecting their lives does not necessarily require one to regard them as legal persons. Second, I argue that even if human embryos may enjoy a certain degree of moral status, they should not enjoy the status of legal personhood. Finally, by carrying out the foregoing argument, I also like to clarify the unique institutional implication of legal personhood as opposed to moral status.

This article argues that, because of the limited development of human embryos and their lack of sentience and consciousness, despite the respect they enjoy among people and discourses, they enjoy limited moral status. Therefore, even if embryos deserve some degree of legal protection, it is inappropriate to regard them as legal persons in law, and bestow them equal footing with other legal persons. Under such circumstances, this article contents that any argument for protecting human embryos as human beings, actually is proposing to confer them equal protection as human beings, rather than arguing that they are entitled to such protection derived from their status as legal persons. Moreover, I

argue against protecting embryos as legal persons because not only may such arrangement depreciate the heightened status of other legal person, but it may also hamper the continuous exploration of our understanding of human embryos, and the ongoing deliberation of how a plural society can confer its protection of human embryos most properly.

Key Words: embryo, moral status of human embryo, legal status of human embryo, legal personhood, abortion, embryonic research