

# Philosophical Discussion of “Human Life” and “Benefits for Humankind” in the Study of Human Embryos

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## Abstract

This article concerns the question of whether, and to what extent, comparative weighting is possible between human life on the one side and benefits for humankind on the other. Comparative weighting underlies the representative positions in both the Japanese report titled “Basic Principles on Handling of Human Embryos” on July 23, 2004, and statements of the German Ethics Council on cloning practices (September 2004). In contrast, Dietmar Hübner stresses the priority of the negative “right of defense” of the human embryo over the positive “right of claim” of scientists. Anselm Müller suggests that human beings are more responsible for positive, rather than negative, action. Moreover, Müller discusses the issue of radical instrumentalization. Through this consideration, Müller asserts that human dignity is more strongly infringed upon by cloning practices for research purposes than by the study of surplus human embryos. In the former case, the human embryos would be produced only for specific research uses. The practice of comparative ranking or weighting of human life and benefits to humankind, in order to assess relative moral claims, is over-simplified and inadequate to the task. Other viewpoints are needed to advance our thinking on this subject.

**Keywords:** human life, benefits for humankind, instrumentalization, legal status of the human embryo, the right of defense, the right of claim, moral responsibilities

## Introduction

In the recent international debate about human embryo studies, some argue that the human embryo should be respected for its “human dignity,” whereas others argue that “a human embryo is not a person.” As this would be an endless dispute, which would serve no purpose but to reveal the significant differences in our cultural values, it is necessary to review each argument grounded in various ethical standpoints.<sup>1</sup> In this chapter, I will first examine the reports and joint statements regarding human embryo studies published in Japan between 2001 and 2004 to confirm the underlying idea supporting their arguments. Next, I will review the statement issued by Germany in 2001, which

has some of the strictest legal policies on research practice in the life sciences, to clarify the similarities and differences from the reports by the Japanese government. This article will show that a specific argument in the Japanese reports offers a similar view to one of the three policy statements announced in Germany. This specific argument puts “human life” on the one side and “benefits for humankind” on the other, to weigh the moral significance of each. I will discuss the arguments of Reinhard Merkel, a law professor at the University of Hamburg, and the opposing view of Dr. Dietmar Hübner of the Institute of Science and Ethics at the University of Bonn. While discussing these conflicting perspectives, I will assess whether a conceptual distinction has been neglected in such comparative weighting practice. I will also investigate the

new conceptual distinction introduced by Anselm Müller, whose position differs from Dr. Hübner's. To advance the ethical debate beyond comparative weighting between "human life" and "benefits for humankind", I will assess the competing arguments noted above, to identify and utilize a possible clue to advance the ethical debate on the issue of human embryo studies.

### **1. Ethical standpoint in reports and joint statements published in Japan**

The current situation concerning scientific research on human embryos or human somatic cell nuclear transfer (hSCNT) embryos in Japan, described below, derives from important milestones in the discussion as well as arguments found in related published documents. The "Guidelines for Derivation and Utilization of Human Embryonic Stem (ES) Cells" issued in September 2001 by the Ministry of Education, Culture, Sports, Science and Technology (MEXT) authorizes the utilization of surplus embryos left over from assisted reproductive technology (ART), "within 14 days after fertilization," solely for "Basic Research" purposes (Articles 2 and 6). The Bioethics Experts Committee of the Council for Science, Technology, and Innovation (CSTI) in the Cabinet Office published the "Basic Principles on Handling of Human Embryos (Interim Report)" on December 26, 2003. The majority of the committee members supported the MEXT guidelines and further proposed that the "creation of the human embryo can be acceptable exclusively for research purposes (IV.2.c)," while they remained "undecided (VI.1)" about the appropriateness of creating/using hSCNT embryos for human embryo research purposes.

In response, the Bioethics Experts Committee published the "Basic Principles on Handling of Human Embryos"<sup>2</sup> on July 23, 2004. This report focused on the discussion of the appropriateness of "creating/using the human embryo for research purposes" and "creating/using human somatic cell nuclear transfer embryo[s] for research purposes" under the premise that the use of surplus human embryos for research purposes had been socially approved (Chapter 2, Section 3, Article (1) and Chapter

3, Section 3, Article (1)). The report argued that "creating/using human embryos" should be "approved" exclusively for the "purpose of ART study (Chapter 2, Section 3, Article (1))" and "creating/using human somatic cell nuclear transfer embryo[s]" should also be "approved" only to resolve "the issue of rejection reaction" and "limited to basic research practice," exclusively for "regenerative medicine study for the treatment of intractable diseases (Chapter 3, Section 3, Article (1) and (2))." Guided by the interim report's ethical standpoint mentioned above, this final report defined the human embryo as the "'sprout of human life' capable of growing into a 'human being'" (Chapter 2, Section 2, Article (3)). They limited the period in which the human embryo could be used for research purposes to "before the formation of primitive streaks." This refers to the fact that, before the formation of primitive streaks, the embryo has not yet reached the "status of growing into an individual human being" because the human embryo "cells have the pluripotency" at this point (Chapter 2, Section 3, Article (1) and Chapter 3, Section 3, Article (1)).

On what argumentative grounding is the exclusive approval reported in this particular final report based? The argument in this report appears to be characterized by the belief in a consistent comparative weighting between "human existence and life," on the one hand, and "benefits for health and well-being of the people," on the other hand, balanced on the same scale of moral assessment. The comparative weighting in this particular report gives more weight to the latter than to the former. The report argues that the human embryo is "not the same as 'a human being,'" although it is a "sprout of human life (Chapter 1, Section 1, and Chapter 2, Section 2, Article (2))." Thus, it should be weighted lightly, until the formation of primitive streaks because its legal status at this point should be considered that of an immature "individual human being." Regarding the benefits and health of humanity, two weights are probably placed on the scale, namely, further "improvement" in "ART" development conducted thus far concerning the creation/usage of the human embryo (Chapter 2, Section 3, Article (1)), and the possible solution for "the matter of rejection reaction" concerning the creation/usage of the hSCNT embryo (Chapter

3, Section 3, Article (2)). However, an essential question remains: Is it helpful to evaluate the issue by opposing “human existence and life” to “benefits for health and well-being of the people” and weighting their moral significance by removing or adding weighted benefits on the scale?

The “Joint Statement Regarding the ‘Basic Principles on Handling of Human Embryos’ (July 13, 2004)”<sup>3</sup> issued by five members of the Bioethics Experts Committee handles the above question by raising several doubts: whether “the matter of ‘human dignity’ and the ‘benefits’ brought by the life-manipulating technology ‘should be placed on the same scale,’” whether “any exceptions in the fundamental principle can be tolerated in exchange for ‘benefits,’” and whether “there can be any ‘benefits’ placed above the ‘dignity of human beings (or lifeforms capable of growing into human beings)’ (Chapter 1, Section 2).”

The joint statement further develops the discussion from different perspectives. According to the statement, “the creation of the human embryo for research purposes” must be grounded in an “extensively justifiable cause and reasoning” in comparison with the research using surplus human embryos. This is because the life of human embryos, in this case, is “decided in advance to be sacrificed” for the goal of conducting research. Besides, the statement further argues that a solid argument to support this claim “was not presented” in the discussion of this particular committee (Chapter 2). As a result, the “creation of the human embryo for research purposes” was not to be approved in the situation at that time. These remarks reveal the statement’s underlying assertion that a particular difference should exist at the level of instrumentalization of human life. Concerning the matter of “creation/research of human somatic cell nuclear transfer embryo[s],” the statement also argues that the “discussion from the viewpoint of the levels of possible risks of [...] human life instrumentalization in creation/utilization of embryos should be essential (Chapter 1, Section 1 and Chapter 3).” This argument reveals the statement’s concern about the high risks related to this practice leading to the instrumentalization of human life. Accordingly, the statement demands highly persuasive

“scientific grounds” to justify the practice (Chapter 1, Section 1).

Should such grounds be presented, the statement contends that “a fragile compromise in ethical considerations could be reached to justify [...] the creation/usage of human somatic cell nuclear transfer embryos to save the patients suffering from specific intractable diseases.” Yet, since there is “no guarantee of realization of benefits” from results “expected in the research practice” at this point, the “creation/usage of human somatic cell nuclear transfer embryos” should not be “authorized” yet (Chapter 3). The joint statement has presented the two propositions missing in the final report mentioned above. The first proposition concerns a hierarchical difference enabling the comparative weighting of “human dignity and human life” and “benefits brought by life-manipulating technology” on the same scale. The second proposition concerns the different degrees of instrumentalization of human life in research using surplus human embryos compared to creating human embryos precisely for research purposes and creating/using hSCNT embryos. Regarding the first proposition, however, the statement has failed to dig deeper into the matter; this first proposition only raised a question about this issue. As for the second proposition, the report argues that creating human embryos for research purposes and creating/using hSCNT embryos must not be authorized until a persuasive scientific argument is presented. Nevertheless, the “Joint Statement Regarding the ‘Basic Principles on Handling of Human Embryos’” (July 13, 2004) fails to explain the specific practices that would show the different degrees of instrumentalization of human life.

## **2. Arguments in the recent statement announced in Germany regarding human embryo studies: Differences and similarities with arguments in Japan**

The evolving legal situation regarding human embryo studies in Germany offers several competing moral standpoints. First, under the so-called “Embryo Protection Law” of January 1991, it is prohibited to “transfer, acquire, or use” human embryos for any purposes except

for sustenance of life with “punishment of imprisonment of not more than three years or a fine (Article 2, paragraph 1).” This particular criminal law further establishes that “those who artificially create the situation in which a human embryo with the same genetic traits as embryos of other species, infants, humans, or the deceased is created will be charged with imprisonment of not more than five years or a fine (Article 6, paragraph 1).” Nevertheless, the so-called “Stem Cell Laws” (=Stammzellengesetz), enacted July 2002, allow for importing and using human ES cells limited to those collected before January 1, 2002, for research purposes.

A movement to amend relevant laws is gradually emerging in Germany in response to the growing public concerns over a possible decrease in the levels of internationally competitive scientific research technologies, leading to a problematic situation in which strict criminal laws hinder the efforts to save patients with intractable diseases. In this context, the German Ethics Council, established in 2001 by the German Federal Government, issued a “(Statement Regarding) the Cloning Practices for Reproduction Purposes and Medical and Biological Research Purposes (September 2004).”<sup>4</sup> This particular statement presents the following three standpoints in parallel, namely, Standpoints A, B, and C.

**Standpoint A:** All studies, including not only those involving the creation of hSCNT embryos but also those using surplus human embryos, must be banned entirely.

This particular standpoint is based on the following logic. First, it can be acceptable to infringe on the right to life of a specific person when the specific person endangers another person’s life; however, the survival of the surplus human embryo threatens no other lifeforms’ survival. For that reason, it is unacceptable to infringe on the right to life of the surplus human embryo.<sup>5</sup> As a result, the study of surplus human embryos is unacceptable because it would “limit” or even “terminate” the “existence” of a specific human embryo, which would never pose any threat to others. The argument proceeds by disagreeing that the human embryo has a lower degree of “dignity and right to life as [a]

human being” than those already “born”. The fundamental human right of the born is not recognized solely for the protection of “self-consciousness, sensibility, or the ability to act.”<sup>6</sup> The argument continues that the level of instrumentalization should be remarkably higher in the research creating hSCNT embryos, in which the purpose of the embryo’s use is “set in advance” before its creation, as opposed to research using surplus human embryos, and that no “other purposes” can justify such action. This standpoint further argues that if we allow this use, the research creating hSCNT embryos would qualify as nothing more than “animal tests.”<sup>7</sup> This particular standpoint shows a unique view that is not seen in Japan’s previously mentioned published reports or statements.

**Standpoint B:** The creation/utilization of hSCNT transfer embryos for research purposes can be allowed under specific conditions.

This particular standpoint argues that the demands for “protection” of pre-birth life should increase accordingly as “the delivery date comes closer,” and that the human embryo cannot be accorded “the same level of [...] right to dignity or protection of the right to life as those recognized in persons after birth.” This argument admits studies of surplus human embryos and research on the creation of hSCNT embryos, such as practices revealed in the aforementioned summary published in Japan.<sup>8</sup>

**Standpoint C:** The study of surplus human embryos can be allowed, but the research concerning the creating hSCNT embryos should be banned in the current situation.

This particular standpoint points out first that the degree of “instrumentalization” of hSCNT embryos, which “[...] has not been created solely for their own purposes,” should be higher than in the case of surplus human embryos.<sup>9</sup> Then, it argues that whether we could “control the growth of ES cells or whether they should not develop any tumors in the first place” currently remains unknown. Thus, this standpoint estimates the chances of gaining clinical or academic benefits from these technological

advancements to be relatively low.<sup>10</sup> Given the above reasons, this standpoint takes a similar position as in the previously mentioned joint statement issued in Japan to allow the study of surplus human embryos, but it denies the possibility of research on hSCNT embryos in the current situation.

Among the above three standpoints, Standpoint B proposes recognizing the gradual differences in human life protection, which is the core argument of the previously mentioned summary published in Japan. Standpoints A and C are based on the “degree of instrumentalization” as described in the joint statement issued in Japan; moreover, the issue of “the case in which the infringement of the right to life can be tolerated,” which is not recognized in the relevant debates in Japan, seems to be considered in Standpoint A.

### 3. Merkel and Hübner

To further clarify the issue that creates the difference in viewpoints around the study of surplus human embryos and the research around creating hSCNT embryos, let us consider the views of Professor Merkel, who strongly supports Standpoint B, as well as the opposing opinion by Hübner, in the following section.

#### 3.1 Merkel—the argument based on a theory of the legal status of the human embryo

Merkel’s argument starts with the following thought experiment. A fire breaks out in a biotechnology laboratory. If “ten living human embryos fertilized *in vitro*” and “an unconscious infant [...] are left in the smoke-filled room and we could save either one of them, which would we save? Merkel argues that, without a doubt, we would save the infant in this case. In other words, the value of “protecting” human embryos is “lower” than that of protecting the infant.<sup>11</sup> As above, Merkel advances his argument, starting with this thought experiment to emphasize the clear “differences in qualitative [legal] status” between human embryos and infants or children.<sup>12</sup>

Merkel further argues that an early-stage

human embryo cannot be treated as “equivalent to [a] person” such as an infant, toddler, or fully grown adult. Until the formation of primitive streaks, the human embryo is not “the numerally same as one human life.” Therefore, Merkel concludes that the fundamental right of a human embryo would have a low level of legal protection, which is hardly the same as that of an adult; also, this legal protection should be “limited” if it “conflicts with the vital interest” of the “individual personality.”<sup>13</sup>

According to Merkel, in other words, the following benefits are expected in the human embryo study: “replacement for the damaged brain cells of patients with Parkinson’s disease or Alzheimer’s disease, treatment for multiple sclerosis, treatment for transverse palsy, [...] regeneration of the damaged cardiac muscle cells, [...] or regeneration of bone marrow cells.” Each of them is a “morally high-ranking goal.” Thus, Merkel argues that the “use of the human embryo in the early stage [...] in the research for the goal” can be “morally tolerated.”<sup>14</sup> Merkel also argues that even the creation of the human embryo can be “morally tolerated” for research aiming at “morally high-ranking goals.” Merkel insists that how the human embryo “has reached the current status is not the point,” but “the only point is what we are allowed to create by using” the being with the low legal status called the “human embryo.”<sup>15</sup> The answer to the debate around the matter of “cloning for medical purposes” should present itself by following his argument, because “the future solution for the issue in transplantation therapy” should be the “morally high-ranking goal.”<sup>16</sup>

From Merkel’s viewpoint, criminal prohibitions such as the “Embryo Protection Law” amount to acts of “violation against the duty of the nation” to offer “salvation” for “patients in critical condition with the chance to live.”<sup>17</sup> The above arguments by Merkel appear to show a distinctive characteristic; his approach ranks the levels of protection for “human life” hierarchically, by weighting or assessing levels of protection comparatively with the “other moral goals.”

### 3.2 Hübner—discussion based on the view of the demand for rights of the “subjects”

If we attempt to disagree with Merkel’s abovementioned view by insisting that the human embryo has an essential or comprehensive “human dignity”, regardless of its stage of development, thus denying any status ranking after fertilization, we would not likely convince others. Hübner seems to understand this likelihood as well and starts his argument with the following question. Suppose there were “qualitative differences” in human life’s legal status—in other words, suppose we accept the premise of the opposing argument. Should such a ranking theory justify the use or disposal of the human embryo in experiments with the goal of “establishing disease treatment in the future” for patients?<sup>18</sup> Hübner identifies the following important difference between the cases of the previously mentioned laboratory incident and the study of surplus human embryos. In the example of the laboratory incident, the “lives” of both “human embryos” and the “infant” are in danger under the same circumstance. In contrast, in the case of the study of surplus human embryos, “one of the concerned parties,” namely, only the patient, is in danger, not the human embryo, which has not suffered from fatal disease at this point yet. The embryo has “been demanded” to give up its right to life, solely to “save the others.”<sup>19</sup> If we replace the human embryo with an adult, the case should be the same as “saving [other] patients by killing a healthy person.” Hübner asks if the “status ranking” that supposedly exists between human embryos and adults should genuinely justify such a brutal act of “saving patients by killing the healthy embryo.”<sup>20</sup> Hübner answers this question as follows. It is unacceptable to sacrifice the “holder of the right to life” for those “in danger,” even though the former has a lower “right to life” than the latter and its life is not in immediate danger.<sup>21</sup>

Hübner refers to the following two legal rights to support the argument; the first is “the negative right of defense” (*negatives Abwehrrecht*), and the second is “the positive right of claim” (*positives Anspruchsrecht*). This negative right is related to “the freedom from invasion of others,” while the negative right is

related to “the freedom of action of oneself.” In the case of the study of surplus human embryos, the negative right indicates “the right to life” of the human embryo in question, and the positive right is expressed as “the right of the scientist to freedom of research” to advance medical technologies.<sup>22</sup> According to Hübner, prohibiting the violation of “the right of defense” of the negative right satisfies “the right of claim” of the positive right. In other words, “prohibiting the sacrifice of others to save those in danger,” is too “fundamental” to be sanctioned based solely on different rankings in the right-to-life hierarchy.<sup>23</sup> It could be plausibly argued, in the case of the previously mentioned laboratory incident, to weight the differences in the right to life to save either ten human embryos or one infant, if the level of danger they were facing, as well as the level of the possible damages they would suffer, were equal.<sup>24</sup> However, in the case of the study of surplus human embryos, the levels of their “liability”<sup>25</sup> are already different, for “the right of defense” is engaged in the case of the human embryo, while “the right of claim” is involved in the case of the scientists. Moreover, the levels of the danger posed are different as well since the human embryo would be killed when the research is approved, but the patient would not suffer the same fate, regardless of whether the research is approved.<sup>26</sup> As a result, it is impossible to balance these concerned parties’ situational differences merely by applying the differences in how they rank in terms of the right to life, based on legal status.<sup>27</sup>

As discussed above, Hübner’s argument that we cannot become complacent on the comparative weighting of “human life” and “benefits for humankind” on the same scale should be noteworthy in the argument over the conceptual distinction between the new notions of “the right of defense” and “the right of claim.”<sup>28</sup> However, even if we consider the matter by the distinction between “the right of defense” and “the right of claim,” and assume the former is superior to the latter, uncertainties remain. For example, in what situation is it evident enough that “the right of defense” should supersede “the right of claim” to overrule the comparative weighting of “human life” and “benefits for humankind” as Hübner claims?

Does a human embryo a moral value above

‘zero’ have? Does it no moral value whatsoever have? Is there some middle position? What if the human embryo’s right to life is ranked a little higher? Should we consider “the right of defense” of the human embryo as the priority, before we weight “human life” and “benefits for humankind” comparatively? As Hübner bases his argument on the hierarchical distinction of different protection levels of human embryonic life, further discussion is needed concerning how to properly rank these levels.

#### 4. Müller—discussion from the viewpoint of the “doer” handling the objects

##### 4.1 Ranking by moral responsibilities

As discussed in the previous section, Hübner proposes a new distinction based on the claim of rights from the object, the human embryo. Müller also points out another possible distinction neglected in the debate surrounding human embryo studies. He treats the issue of the study of surplus human embryos as involving “moral responsibilities.” In other words, Müller discusses the matter of human embryo studies from the viewpoint of the “doer” who deals with human embryos and patients.

Müller’s argument starts with the following question: “Does a person bear the same level of [moral] responsibility in his doing (*Tun*) and not doing (*Lassen*)?”<sup>29</sup> In other words, he is asking if we are to hold the same level of “moral responsibility” in choosing to do and not to do something. In response to this question, Müller argues that we cannot give these responsibilities the same weight because “the responsibility of action” and “the responsibility of inaction” are characterized by “asymmetry” (*Asymmetrie*).<sup>30</sup> He advances the following argument, which often appears in the debate around the study of surplus human embryos, as the core issue in his discussion:

[We are] responsible for the deaths of human embryos to be used in experiments, and at the same time, if such experiments should not be conducted, any possible benefits in research findings would not be accomplished, and as a result, the cure for

various intractable diseases would not be available in the near future; [we are] also responsible for such a situation.<sup>31</sup>

According to Müller, the result of a specific action, in this case, “the death of the human embryo,” is something certainly expected, for which life science researchers must be held responsible. However, they should not be liable for all results from not doing something. At the same time, the range of responsibility in the “practice” of bioengineering could include “unexpected results,” such as “damage to the filial generations” or the creation of new “genetic disorders.”<sup>32</sup> As for something that we “let be,” on the other hand, we will not be accused of anything if we merely maintain its status quo. Therefore, Müller’s argument above is not sound enough to justify placing these “asymmetrical” responsibilities of different weights on the same level.

Furthermore, Müller mentions that we sometimes should be accountable for moral responsibility in “not doing” something, for instance, failure to perform promises we make, to execute contracts we sign, or to fulfill our professional “duties.” He also refers to the possible case of uncompensated damages we “have involuntarily inflicted upon” others and have failed to amend.<sup>33</sup> Müller continues to say that, although doctors indeed have a “professional obligation” to save actual patients, they are morally exonerated by refraining to act in all cases to effect potentially huge benefits expected in bioengineering. The moral responsibility “not to harm others” is usually more significant than the responsibility “to serve others,” except for the cases mentioned above.<sup>34</sup> In the case of the study of surplus human embryos, therefore, the moral responsibility involved in violating the human embryo’s “life” is more severe than that engaged in the delay caused by our “inaction” in advancing the “benefits for humankind.”

The above arguments by Müller are quite significant as they reveal a new problem in the discussion of the comparative weighting in placing “human life” and “benefits for humankind” on the same scale, from the viewpoint of a “doer who handles the object.” In the discussion about the study of surplus human embryos, we cannot simply contrast

“action” and “inaction,” or more specifically, the moral responsibility engaged in “killing human embryos” with that involved in the failure to “contribute to the benefits for humankind.” We also cannot insist that the moral responsibility of “inaction” should be more significant than that of “action,” merely by bringing up the possible “benefits for humankind” expected in action. Müller’s arguments, however, are not entirely free from some points of ambiguity. If the moral responsibility in “inaction” is demanded in some cases, while other cases can be free from liability, where specifically can we draw the line? Suppose for a moment that we are morally responsible for our “inaction” when we fail to keep our promises or fulfill our professional duties, as Müller argues. If that is true, despite many uncertainties currently involved in the estimation of the academic/medical outcomes of ES cell studies, not doing something that could save patients in the future with sufficient prospect could be considered morally irresponsible. Besides, we should consider if there would be room for comparison between the responsibility for the “death” of the human embryo and responsibility for the “benefits” for humanity.

#### **4.2 Ranking of “levels of instrumentalization” until “total instrumentalization”**

Müller continues his argument from another standpoint of “human dignity” (*Menschenwürde*). Müller defines “human dignity” as follows: “To respect the dignity of a person is to admit his value simply by his existence. Existence is, then, according to Müller, the definitive criterion for human dignity, not functionality, usefulness, or achievements.”<sup>35</sup> Müller then discusses the issue of “radical (*radikal*) instrumentalization.”<sup>36</sup> Müller’s argument rests mainly on the violation by the “production” (*Erzeugung*)<sup>37</sup> of the human embryo, rather than the infringement of “human dignity” of the existing human embryo. In other words, the producer (*Erzeuger*) of the human embryo admits the “value of the human embryo only for its usefulness for specific purposes” in the context of “radical instrumentalization.”<sup>38</sup> The human embryo would “come into existence” only for specific purposes and would “be disposed of” for that goal.<sup>39</sup> If we further discuss the

issue of the “levels of instrumentalization” in the human embryo study according to Müller’s view around “radical instrumentalization,” it would be as follows. On the one hand, human embryos used in the study of surplus human embryos have come into existence initially for their reproductive purpose; they were then used and disposed of for research purposes. On the other hand, human embryos created solely for research purposes have come into existence only for others’ goals and were then used and disposed of after a specific period. Hence, in the latter case, the very “existence” of human embryos defined in the abovementioned argument by Müller premised on “human dignity” is entirely controlled from the beginning to the end by others, which means that their “human dignity” is entirely infringed. According to Müller, such factors as how urgent or noble the “goal” is in such cases cannot alter the fact that their “human dignity” is “radically” infringed.<sup>40</sup> For example, we could insist on conducting *x* in any fashion and because of any noble goal, such as the pursuit of truth, medical technology advancement, a cure for diseases, or the promotion of human welfare. Yet, the fact remains that the dignity of the human embryo is utterly violated for such goals. In a situation of such total instrumentalization, all comparative weighting is denied, and such action should be prohibited.

As shown above, Müller’s view of “radical instrumentalization” presents a vital clue to clarify the “levels of instrumentalization,” which the previously discussed statements issued in Japan have not confirmed. However, Müller’s analysis of “radical instrumentalization” appears to be the difference among the views advanced. The “levels of instrumentalization” in these statements did not show the highest moral rank; as a result, these levels would remain relative in every respect. As a result, the study of surplus human embryos, the creation of human embryos for research purposes, and the research of the hSCNT embryo, could be weighted comparatively, on scientific grounds. Yet an issue remains around the levels of instrumentalization in the latter two types of research on the creation/usage of human embryos. Is it morally defensible to consider such instrumentalization as the highest level of violation against “the dignity” of the human embryo? Is human embryo’s dignity at



the same levels as that of other existing animals or plants? Does the instrumentalization allow for acknowledging the value of the human embryo as an individual human being?<sup>41</sup> The differences in the standpoints would possibly emerge again in this issue, depending on which moral argument we choose from the above.

## Conclusion

In this article, we have discussed Hübner’s criticism of Merkel’s view and Müller’s argument. Their arguments are significant in revealing that we cannot dwell on the simple comparative weighting between “human life” and “benefits for humankind” in the discussion of human embryo study; on the one hand, Hübner introduces a new conceptual distinction based on “the claim of rights from the subject”, while, Müller has proposed another distinction from the viewpoint of “the doer who handles the object.” However, we cannot expect the debate of human embryo study to be settled entirely by introducing their arguments alone, as shown in the several questions that arose in the analysis. As for the matter of weights placed on the distinctions they have proposed, we will discuss further in the future under what circumstances these weights would become more significant than the conflict between “human life” and “benefits for humankind.”<sup>42</sup>

## Endnotes

- 1 The author recognizes the significance of similar recommendations in the following documents: Hatate, Toshihiko, and Kurihara, Chieko. *Seimeirinri Senmon Chosakai Sono Mondaiten (Sono 1)* [Bioethics Experts Review Board and its Issues (Part 1)], 2004 Grant-in-Aid for Scientific Research (B) (1) Project Number 16320002, and *Seimeikagaku ni okeru Rinriteki Houteki Shakaiteki Shomondai I* [Ethical, Legal, and Social Issues in Life Sciences I], the Research Program by the Research Grant of the Pfizer Health Research Foundation. International Joint Research Project 2003-2004 for Research Group (B). p. 44.
- 2 Refer to the following document for the characteristics of the Bioethics Experts Committee: Hatate, Toshihiko and Kurihara, Chieko.

*Seimeirinri Senmon Chosakai Sono Mondaiten (Sono 1)* [Bioethics Experts Review Board and its Issues (Part 1)] ref. Note (1). pp. 37-45 and 49-63. Hatate points out that the human embryo and the hSCNT embryo are discussed at the same level of significance as a characteristic in the argument in the final report (ibid. p. 40). Kurihara criticizes the report from the standpoint of protecting the dignity of women who provide unfertilized eggs (ibid. pp. 55, 61, 69, and 71).

- 3 総合科学技術会議第38回生命倫理専門調査会の資料3. <https://www8.cao.go.jp/cstp/tyousakai/life/haihu38/haihu-si38.html>
- 4 The reference for the recent situation in Germany after the enactment of the Embryo Protection Law is the following: Morinaga, Shinichiro. (2005). *Doitsu oyobi EU [Germany and EU], Seimeikagaku ni okeru Rinriteki Houteki Shakaiteki Shomondai I* [Ethical, Legal, and Social Issues in Life Sciences I], ref. Note (1), esp. p.86f. Furthermore, a detailed reference for the statement issued by the German Ethics Council is available in the following document: Matsuda, Jun. (2005). *Idenshi Gijutsu no Hatten to Ningen no Mirai—Doitsu Seimei Kankyō Rinrigaku ni Manabu [Gene Technology Advancement and the Future of Humankind—Learning from Bioenvironmental Ethics in Germany]*, Chisen Shoin, esp. pp. 41-48, 81f.
- 5 German Ethics Council (Statement) 2004, *Klonen zu Fortpflanzungszwecken und Klonen zu biomedizinischen Forschungszwecken Stellungnahme [Cloning for Propagation and Cloning for Biomedical Research Purposes]*, [http://www.ethikrat.org/stellungnahmen/pdf/Stellungnahme\\_Klonen.pdf](http://www.ethikrat.org/stellungnahmen/pdf/Stellungnahme_Klonen.pdf)
- 6 Ibid., pp. 55f.
- 7 Ibid., pp. 57f.
- 8 Ibid., pp. 64, 76; cf. ibid., pp. 66f.
- 9 Ibid., pp. 95f.
- 10 Ibid., p. 91.
- 11 Merkel 2001: Reinhard Merkel, *Rechte für Embryonen? Die Menschenwürde lässt sich nicht allein auf die biologische Zugehörigkeit zur Menschheit gründen*, in: C. Geyer (Hrsg.), *Biopolitik: die Positionen [Right for Embryos? Human Dignity Unassociable to the Simple Biological Trait of Humans]*, in: C. Geyer (Hrsg.), *Biopolitik: The Positions*], Frankfurt a.M.: Suhrkamp Verlag, 2001, p. 57.
- 12 Hübner 2004: Dietmar Hübner, *Rechtstypen*

- und Pflichtentypen in der biomedizinischen Ethik. Über Abwägungskonstellationen beim Embryonenschutz, in: Jahrbuch für Wissenschaft und Ethik 9 [Types of Rights and Types of Duties in the Biomedical Ethics: About Weighing up Constellations in Embryo Protection, in: Journal of Science and Ethics 9], 2004, p. 77. According to Hübner, the example of this particular thought experiment was first discussed by Leonard Glantz and published by George Annas. cf. *ibid.* p. 72.
- 13 Merkel 2001, p. 62.
- 14 *Ibid.*, p. 63.
- 15 *Ibid.*
- 16 *Ibid.*, p. 64.
- 17 *Ibid.*
- 18 Hübner 2004, pp. 75f.
- 19 *Ibid.*, p. 78.
- 20 *Ibid.*, p. 79.
- 21 *Ibid.*, p. 81.
- 22 *Ibid.*, p. 69.
- 23 *Ibid.*, p. 81.
- 24 Cf. *ibid.*, p. 86.
- 25 *Ibid.*, p. 68.
- 26 Cf. *ibid.*, p. 86.
- 27 Cf. *ibid.*, p. 92.
- 28 Unlike Dieter Birnbacher, who brings the patient's right to promote his health to the forefront of the argument, Masayoshi Tarui points out the significance of the viewpoint that regards the right to life of human embryos as the fundamental right. The author agrees that the issue should be discussed based on this viewpoint. Birnbacher, Dieter. "Ningen no Songen—Hikaku Kouryou Kanou ka Ina ka [Human Dignity—Is it Possible to Weight Them Comparatively]" (Symposium presentation). Research Program by the Research Grant of the Pfizer Health Research Foundation International Joint Research Project 2003-2004 for Research Group (B). Grant-in-Aid for Scientific Research (B)(2) Project Number 16320001, and the Grant-in-Aid for Scientific Research (B)(1) Project Number 16320002 ed. 2005. pp. 23f.
- 29 Müller 2004: Anselm Winfried Müller, „Lasst uns Menschen machen!“ Ansprüche der Gentechnik — Einspruch der Vernunft [“Let us Make Man!” Demands for Gen Technology. Opposition of Reason], Stuttgart: Kohlhammer, 2004, p. 54.
- 30 *Ibid.*
- 31 *Ibid.*, p. 57; cf. *ibid.*, p. 63. Müller introduces Hans-Martin Sass as the researcher who has a similar view. cf. *ibid.* p. 57.
- 32 *Ibid.*, p. 58.
- 33 *Ibid.*, pp. 60f.
- 34 *Ibid.*, p. 61
- 35 *Ibid.*, p. 162.
- 36 *Ibid.*, p. 145.
- 37 *Ibid.*, p. 174; cf. *ibid.* p. 139.
- 38 *Ibid.*, p. 142.
- 39 *Ibid.*, pp. 143, 145.
- 40 *Ibid.*, pp. 148, 158f.
- 41 Cf. *ibid.*, p. 164.
- 42 I would like to thank the staff member of CRL Inc. for their proofreading service to brush up my manuscript.
- \* This article is an English version of the following article and includes updates: Shuku Funaki, “Hitohai kenkyuu wo meguru ‘hito no seimei’ to ‘jinrui heno rieki’ nitsuiteno tetsugakuteki kousatsu,” *Igaku Tetsugaku Igaku Rinri* (The Japanese Association for Philosophical and Ethical Researches in Medicine), 2006, Vol.24, pp.1-9.