

# Problems with Korean Laws Regarding Human Ova Donation and Research\*

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## Abstract

*The Dr. Hwang scandal caused a great deal of concern and debate in Korean society. In response, the Korean bioethics law passed in January 2004 and was promulgated in January 2005. It has since received intense criticism and has gone through four partial modifications. This paper analyzes the problems of the Korean bioethics law regarding the donation of and research on human eggs. The bioethics law allows couples to have a child using the reproductive cells of another woman. It also allows cloning and other manipulations of human embryos. These allowances raise many ethical problems that need immediate attention and correction. In response to this situation, this paper asserts that institutional measures should be put in place to prevent criminal activities, and any law on bioethics must put the value and dignity of human beings at the center and regulate scientific activities in service of human beings.*

**Keywords:** bioethics law, egg donation, eggs for research purposes, commercialization of the reproductive cells, destruction of the embryos, surplus embryos

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## Introduction

Dr. Hwang's false papers and the moral problems inherent in his research revealed the reality of egg donation. This has caused a great deal of concern and debate in our society. The need to continue one's lineage through male offspring is still very much embedded in the Korean psyche. As Korea is a patriarchal society, those with fertility problems do not consider adoption as a possibility and prefer to have their own children at any cost to continue the family lineage. For that reason, artificial insemination has been heavily promoted as a treatment for infertility in Korea. Consequently, it is relatively easy to obtain an egg and sperm and there are many surplus embryos. Before the bioethics law passed in January 2005, the absence of any regulations on the use and disposal of these led to eggs and surplus embryos being used for research purposes.

The advancement of technology for artificial insemination and cryo-preservation popularized the storage of reproductive cells and embryos. Some began to use third-party reproductive cells, prompting the necessity for moral and safety regulations.<sup>1</sup> Many religious, academic, and women's groups have shown great interest in and tried to explain the problems with the process of obtaining eggs. However, over their protests, the parliament passed a new bioethics bill that will prohibit the selling of eggs, but will allow it in practice by permitting egg recipients to offer payment, though limited in amount, to egg donors in the case of egg donation. As the law currently stands, it is unsurprising that reports of the illegal buying and selling of eggs continue to persist.

## Dr. Hwang's Case and the Drafting of the New Bill

In *Science* magazine in 2004, Dr. Hwang's research team stated that

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1. According to the statistics department, there were 32,783 artificial inseminations and in 1,039 cases cells from a third party were used.

they had received 242 eggs through donations from 16 women. That means they took more than 15 eggs per woman. In 2005, again in *Science* magazine, they said they used 185 eggs from 18 women. In the forms that they used for agreement for the donation of the eggs, there was no mention of the dangers of the procedures used to harvest these eggs from donors (Koo 2005, 65).

According to the report that the Hanna Women's Clinic submitted to the national bioethics committee regarding Dr. Hwang's work, from January to February 2005, the clinic received donations of 243 eggs from 17 women for Dr. Hwang's research. According to the clinic, the donors were voluntary donors, including disabled persons, in particular, those with spinal cord injuries, patients with incurable diseases, and supporters of Dr. Hwang. During the investigation, these donors were interviewed and it was found that there were 164 donors in total: 63 of them were paid; 31 were voluntary donors; 22 were couples with fertility problems; 2 were from the research staff; and 46 gave eggs through ovariectomy (Ministry for Health and Welfare 2006, 5).

Those who contributed their eggs to Dr. Hwang's research were women facing economic difficulties, women who had a family member with an incurable disease, members of Dr. Hwang's research team, and women undergoing infertility treatment. As such, all the donors were under pressure to contribute their eggs. When the falsification of his research became known, *Science* magazine withdrew his essay. Dr. Hwang undermined the trust that all scientists should enjoy. He tried to cover up the moral problems underlying his methods of obtaining eggs. For these reasons, he was fired from his position at Seoul National University in April 2006. He is still facing charges for illegally buying eggs, falsifying data, misusing research grants, and breaking bioethics regulations. According to investigations by Seoul magistrates, he received 2,236 eggs from 122 women. He allegedly spent 3.8 million won (approximately US\$30,000) for the eggs of 25 women, even after the promulgation of bioethics law in 2005. He was once considered a national hero, but now is a national disgrace.

Table 1. Status of Eggs Offered from Each Clinic

Clinic	Period	Number of Donations	Number of Eggs Donated	Other Factors
Miz Medi Hospital	Nov. 28, 2002– Oct. 24, 2005	91	1,549	- Donation without pay: 14 women, 14 occasions, 182 eggs - Donation with compensa- tion: 63 women, 75 occa- sions, 1,336 eggs - Donation from research staff: 2 women, 2 occa- sions, 31 eggs
Hanna Women's Clinic	Jan. 25, 2005– Dec. 24, 2005	37	543	- Donation without pay: 11 women, 12 occasions, 230 eggs - Infertile patients' donation: 22 women, 25 occasions, 313 eggs
Hanyang University Medical Center	Apr. 12, 2005– Nov. 8, 2005	9	121	- Donation without pay: 8 women, 9 occasions, 121 eggs
Cheil General Hospital & Women's Healthcare Center	Dec. 22, 2004	1	8	- Woman who had terminat- ed treatment for infertility: 1 woman, 8 eggs
Total	Nov. 28, 2002– Dec. 24, 2005	138	2,221	- Total number of donors: 119 women - Number of women who have donated on more than 2 occasions: 15 women

Source: Ministry for Health and Welfare (2006, 7).

The bioethics law passed in January 2004 and promulgated in January 2005 has received intense criticism and has gone through four partial modifications.<sup>2</sup> Law 9110 was passed on June 5, 2008, mandating general health checks of the egg donors, regulating the number of eggs that can be obtained from one woman to ensure safety, prohibiting the nucleus transfer of human cells into animal eggs, ensuring the morality and safety of biotechnological investigation, and enacting several other procedural modifications.

The following are the most important modifications regarding eggs. First, Article 12 prohibits nucleus transfer between human and animal cells. Second, to ensure the safety of the donors, Article 15, paragraphs 2, 3, and 4 were introduced. These state that those clinics who receive eggs must first check the health of donors and limit the number of eggs to be harvested. It also allows clinics to compensate donors for transportation and other costs according to the Ordinance of the Ministry for Health, Welfare, and Family Affairs. Third, more severe punishments are stipulated for those who induce or entice women to donate eggs. They will be punished as severely as those who buy and sell eggs. This law was enforced starting in 2005, but was abolished with the latest amendment.<sup>3</sup>

### **Egg Donation in Korea**

The process of sale and purchase of eggs, as well as locating surrogate mothers, is conducted primarily via the Internet. Mr. Jae Wan

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2. There were four modifications: March 24, 2005, April 11, 2007, February 29, 2008, and June 5, 2008.

3. According to this regulation, those scientists who have been working on cloned embryonic stem cells for three years, with a presidential decree, and have published in scientific magazines may, with the approval of the Ministry of Health and Welfare (the predecessor of the current Ministry of Health, Welfare, and Family Affairs), continue with their research. It was pointed out that only Dr. Hwang would qualify for such requirements and since he was not in a position to continue, it would be impossible for anyone else to obtain permission to conduct research.

Park, who was a Grand National Party assemblyman and also a member of the parliamentary committee on health and welfare, has conducted three studies on the situation of websites dealing in eggs and surrogate mothers. He reported that four in 2005, thirteen in 2006, and seven websites in 2007 were promoting the buying and selling of eggs and use of surrogate mothers. After this report came out in the media, most of the sites disappeared (Kang 2008).

Assemblyman Park relayed to Parliament how egg transactions by a DNA bank with offices in both Seoul and Tokyo in 2005 evoked public criticism, but despite the controversy, the human egg business is still going strong. He pointed out that there is a vacuum of regulation in Korea, and some Korean women offered to be surrogate mothers to infertile Japanese couples for financial compensation (Bae 2006).

There are up to 635,000 couples with fertility problems in Korea, defined as people between 15 and 39 who are married and are considered to be in the fertile age but are having trouble conceiving. Many of them would like to solve their problems with IVF. Eggs are sold from anywhere between 3 to 5 million won per procedure (US\$2,000 to US\$3,500). In the case of surrogate mothers, the Japanese market is willing to pay 40 to 60 million won for a Korean woman, and half of that amount to Chinese and other Asian woman (Kim 2007).<sup>4</sup>

Surrogate motherhood for commercial purposes is not a criminal or civil offense in Korea. There are no regulations against it. Commercial surrogacy is closely tied to the commercialization of eggs. Both transactions need egg brokers to mediate between egg recipients and donors. Articles in *Break News*, an Internet news daily, reported on the practice of commercialization of eggs (Jeong 2008). The price of an egg depends on the education, age, and appearance of the woman who wants to sell her eggs. The advertising and commercial-

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4. According to an article in *Medical Today* on July 31, 2007, there are 15 websites that commercialize eggs and surrogate mothers. During that month, there were 68 cases of people contacting the sites to either find or offer to be a surrogate mother.

ism surrounding the advertising and sale of eggs makes it look like a market for human beings that flourishes in secret between people with different needs: infertile couples, women who are willing to sell eggs for money, and the brokers who profit from both. Since legislation regarding the online purchase and sale of ova has been implemented, the number of sites offering them has dropped considerably. However, there are still many sites that show up under search terms such as “infertility,” through which eggs and surrogate motherhood is commercialized. The women who are offering eggs advertise themselves as young and bright, and the prices vary considerably, depending on the appearance and education of the woman.

In general, the clinics have no way to find out if the eggs donated were given legally or sold illegally, though some clinics have shady deals with brokers. In those cases, a very simple format of agreement is used and the donor only has to show her identification card so that they can proceed with the transfer of eggs. According to the report in *Break News*, most of the women who offer their eggs do so for the purpose of earning living expenses. Among the population of women selling their eggs, there are not only university students but also married women. Some of them are reported to have already served as a surrogate mother on different occasions.

## **Analysis on Current Regulations on Egg Donation and Experimentation**

### *Prohibition on the Transfer of Embryos Between Two Different Species*

Article 12, paragraph 1 of the Bioethics and Biosafety Law states that no one should implant a human embryo in an animal womb, or vice versa.<sup>5</sup>

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5. Those who violate this prohibition could be jailed for up to five years.

Paragraph 2, item 1 prohibits the fertilization of human embryos with animal sperm, and vice versa. However, to observe the activities of sperm, such experiments may be allowed. However, this is still the creation of a hybrid, so should be strictly prohibited.

### *Written Consent for Producing Embryos*

Article 15, paragraph 1: Approved clinics, when obtaining sperm or egg, must obtain agreement from the donor and their spouses.<sup>6</sup>

According to this paragraph, the clinic must let the donors know that it is possible that their eggs or sperm may be used for the pregnancy of a third party. Here, the word “donor” suggests that a woman’s eggs can be used not for her own pregnancy but for other purposes, such as producing a pregnancy in another woman or for research. When the eggs are used for her own pregnancy, the word “donor” is not applied. Therefore, this paragraph hints that egg donation now has become legal. The same applies to donation of sperm.

People can now have a child using the reproductive cells of an unknown person, as well as have the fetus carried by a surrogate mother. Moreover, there are no regulations on who can be the donor, so the donor could be a close family member. Patriarchy is still very strong in Korea, so the continuation of lineage is very important. In such context, it would be easy to have a brother or father of the husband donate sperm if the husband is infertile. In that case, this involves the risk of a biologically consanguineous marriage and may led to serious genetic disorders. The same happens when the woman is infertile, since it would be easy to obtain eggs from her sister or mother or another close relative. Furthermore, there are no regulations on surrogate motherhood, so many abuses are foreseeable. There were some media reports of women in difficult situations who were used as surrogate mothers. Some of them even became victims

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6. Those who violate this regulation are subject to less than two years of imprisonment or a fine of 30 million won.



of criminal organizations dealing in human eggs, as reported in newspapers and other news media.

Use of reproductive cells between nonspouses can upset the order and harmony in the family. Also, since there are no regulations on who can serve as the donor, close family members can easily become donors. This has the potential to create similar problems as when there is marriage between close relatives. Some people could face pressure to donate human eggs, while others might choose to do it for monetary purposes. Further, when cells are given for the pregnancy of others, there are no regulations concerning the availability of information on the biological parents, which the child might want to have when he/she becomes an adult.

From all of this, it is highly probable that IVF between nonspouses will raise many moral issues, such as the baby's right to happiness and disorder among family relations, as well as ethical problems surrounding surrogate motherhood. So far, there is no regulation on IVF between non-spouses and it remains legal. If it is for the purpose of improving the fertility rate, natural methods would be appropriate. IVF inevitably entails the destruction of residual embryos, which is tantamount to the destruction of innocent human life in its earliest stages, and it also leads to the manipulation of human life. Most of all, this law was created to protect the most vulnerable and weak, who are potential egg donors, but as it stands, it will do exactly the contrary and they will become instruments of experiments. Also when there are surplus eggs and if the eggs are donated for the purpose of finding cures for specific diseases, scientists must get the approval of the ethics committee to use the ova for research purposes. However, in other cases, it is not the donor but the clinic who decides the disposition of the surplus eggs, leaving room for manipulation.

Paragraph 2 indicates that the donor must be informed of and agree to the use of the embryo, the span of time that the embryo should be preserved and in what way, when, and how the embryo will be destroyed, and for what other purposes the surplus embryos can be used. It should also indicate the rights of the donor, how the

donor may retract the agreement, how the information on the donor will be protected, and other information that the Ordinance of the Ministry for Health, Welfare, and Family Affairs deems apt to be stated. The clinic must explain all of this in detail to the donor before obtaining the agreement. However, asking to agree to the possibility of using the embryo for purposes other than that of pregnancy contradicts the language in Article 13, paragraph 1. In fact, it prohibits the creation of embryos for purposes other than pregnancy. It is contradictory to say that one cannot create embryos for purposes other than for pregnancy, yet ask the donor to agree to the use of surplus embryos for other purposes.

Article 5, paragraph 3 of the Enforcement Rule of this law addresses the agreement on the period of the conservation of eggs and sperm, the destruction of each, and if the donor agrees to their use for research purposes. Normally, the period of conservation is five years, encouraging the immediate use of the reproductive cell. Thus, it is clear that one can donate eggs or fertilized embryos that are designated for research purposes from the beginning. The law prohibits the creation of embryos that are not for pregnancy, but it has exceptional clauses that allow special cases of egg donation for the purposes of research on incurable diseases. Therefore, the law is self-contradictory in that it prohibits the creation of embryos for purposes other than pregnancy while at the same time seeking agreement on the use of surplus embryos for research. One of the ways to solve this self-contradiction is to delete paragraph 3 and ban all use of embryos, even for research purposes. What is most urgent is to recognize that the embryo is a human being.

### *Physical Examination of Egg Donors*

Article 15, paragraph 2 states that egg donors should undergo a comprehensive health screening before eggs are harvested. It also states that if the donor does not satisfy the Ordinance of the Ministry for Health, Welfare, and Family Affairs, eggs should not be obtained from her. However, it is not clear if the purpose of such regulation is

to protect the health of the woman or the health of the embryo to be created, or both. If it is for the health of the embryo, then it should also be mandatory to do a health check on the sperm donor. Enforcement Rule of the same law enumerates the following diseases as rendering the woman as ineligible for egg donation: syphilis, hepatitis, and AIDS. From this list, it is clear that the health of the embryo is the aim of the law.

#### *Limit of Collection Frequency*

Article 15, paragraph 3 limits the number of eggs that can be obtained from a single donor. When an embryo-producing medical institution collects eggs from the same donor, it shall comply with the limit of collection frequency set by the Presidential Decree.

Article 10, paragraph 2 of the Enforcement Decree of the same law states that the clinic may extract ova up to three times from a single donor, once every six months, when the donated ova are to be used for research purposes and for curing a third party. It is, again, self-contradictory that the law prohibiting the creation of embryos that are not for pregnancy contains this kind of language. According to the law, the purpose of extracting the eggs is not to help produce a pregnancy but to obtain eggs for research. It is important to note that in this case there are no requirements that the clinic explain the risks of egg donation to the donors. Neither is there a limit on the number of eggs that can be obtained at each extraction. The law should serve to protect the donors from potential medical and physical harm and ensure adequate compensation in the event of problems.

Permitting only those donors who meet the specific health requirements and regulating the number of times that eggs can be obtained are good measures to protect donors. If no health screening is required and there are no limitations on how many times eggs can be donated or harvested, a woman looking for her own pregnancy will be able to easily donate her surplus eggs for research purposes. In actuality, the minimum standard of care for the health and rights of the woman is limited when she is donating the eggs for a third party.

Those women who go through IVF inevitably depend on the doctors, and thus, the doctors exert great influence as to the disposition of the surplus eggs. In these circumstances, abuses can easily occur. If the clinic receives approval from the government to experiment on embryos and women go to clinics for IVF, it is highly probable that these women will be pressured to donate eggs,<sup>7</sup> under the pretext of assisting the pregnancy of another woman (Son 2007, 57).

There is no format for agreement on donating eggs for research purposes. Within the agreement format for embryo creation, the third part states the time for which the egg and sperm will be conserved. The agreement asks, at the end of the viable lifespan for the eggs and sperm, if the reproductive products may be used for research purposes. As there is no standard agreement format and each clinic uses their own, clinics are free to draw up verbiage and paperwork that are favorable to their own ends.

#### *Compensation for the Actual Cost*

Article 15, paragraph 4 says that an embryo-producing medical institution may, according to the Enforcement Decree of the Ministry for Health, Welfare, and Family Affairs, pay egg donors a fixed amount for their time and transportation costs.

Article 5, paragraph 3 of the Enforcement Rule of this law states that when donating eggs for a third party, the donor should receive compensation for transportation, food, and time. The amount should be calculated on the same level as the expenses paid to the public servants when they travel. This is in contradiction with Article 13, paragraph 3 of the same law. It states that no one should donate eggs or sperm for payment and no one should lead other people to do so. However, compensation for time, transportation, and food could be seen as payment for the women in the deprived strata of society.

Those who are willing to give eggs for the pregnancy of a third

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7. Many women's groups are doubtful that clinics will provide full and accurate information (Son 2007, 58).

party will often come from the disadvantaged classes of society, and the compensation for expenses could be a temptation. This might serve as an important motivation for donating eggs. If this is true, then egg donation would transform into the buying and selling of eggs. What is interesting about this regulation is that it gives directives to dictate compensation for expenses for egg donors but there are no indications for compensation to sperm donors. In its current state, the Korean bioethics law leaves much leeway in the interpretation of the concept of compensation for expenses. Also, allowing the surplus eggs to be donated for research purposes violates the rights and health of women, not only rendering the body of a woman an instrument but also legalizing the destruction of life.

#### *Storage and Disposal of Embryos*

Article 16 regulates the period of conservation and destruction of the embryos,<sup>8</sup> but looking closely at Articles 15 and 16, these are worded in such a way that the donor can donate egg or sperm not only for the creation of embryos for pregnancy but also for research purposes. What is important is that donation of reproductive cells for research purposes can occur either through suggestion from a doctor or by decision of the donor.

#### *Restrictions on Genetic Tests*

Article 36 discusses the prohibitions of genetic therapy beyond several specific reasons.<sup>9</sup> Despite this regulation, all genetic therapies on

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8. Paragraph 1 says that the embryos can be conserved for up to five years. However, if the parents want, this period can be shortened. Paragraph 2 regulates that, at the end of the period indicated in paragraph 1, if the embryos are not to be used for research purposes, they must be destroyed. Paragraph 3 states that the clinic must provide a written record of the destruction of the embryos. Those who violate this law will be subject to the penalties of Article 53.

9. The following cases are permitted: genetic illness, cancer, AIDS, and other illness that threatens life or health in a serious manner; therapy for those illnesses for

eggs, sperm, embryos, or fetuses are prohibited. But Article 25 allows the genetic testing of embryos and fetuses for illnesses indicated in the Presidential Decree. Allowing genetic tests but not treatment of the embryos and fetuses leads to the death of those embryos and fetuses that are genetically deformed. Therefore, it would be more coherent to prohibit all genetic tests or to permit the application of genetic therapies. This is another internal contradiction within the law in its current state.

#### *Other Points of Concern and Modification*

If the individual egg and sperm donors agree, clinics may then use the embryos created with those reproductive cells for research purposes. However, we cannot justify the sacrifice of a human embryo to find cures for illnesses as it leaves the door wide open for human cloning. When research is conducted with embryos, it is difficult to distinguish whether the scope of the research is to clone or to develop therapies. Therefore, only research that studies the illnesses of the reproductive cells or the treatment of the embryos should be allowed, as long as it remains difficult to distinguish between embryos for cloning purposes and those for cure purposes.

This law allows the genetic testing of embryos and fetuses to diagnose muscular dystrophy and other illnesses indicated by the Ordinance of the Ministry for Health, Welfare, and Family Affairs, but it does not allow genetic therapies on eggs, sperm, embryos, or fetuses. It is unreasonable to prohibit genetic therapy while allowing the genetic tests. Genetic testing and research is intended to find cures, but prohibiting treatment while allowing genetic testing may lead to abortion when a fetus is found to have a genetic defect. Therefore, genetic tests on embryos or fetuses must be done only within the scope of offering genetic treatment to the same embryo and fetus if any defect is found.

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which there are no other cures or that could be considerably better than existing therapies; and for the prevention and treatment of other illnesses that the Ministry for Health, Welfare, and Family Affairs deem necessary.

## **Conclusion**

I would like to summarize the points I have covered in this paper by addressing the following questions.

First of all, I would like to address why commercialization of eggs and sperm is immoral. Selling human eggs is different from simply selling or donating cells or organs. It opens the possibility of becoming a biological parent. A child has the right to be born as a fruit of love between parents. Yet, by selling one's eggs, the eggs could be fertilized with the sperm of an unknown person by a technician who has no relationship with the child. A child has the right to grow up in his or her own loving family and has also the right to know who his or her biological mother is. When a child is born through eggs purchased from another woman, it becomes almost impossible to exercise these rights. On the other hand, there is the potential for involvement by criminal organizations in the commercialization of eggs and, as a result, women in difficult situations could become their victims. Those couples who are desirous of having a child at any cost, those who seek to make money through the sale of human eggs, and those who broker the deals are commercializing the process of creating human life in a very unethical manner. Selling eggs not only renders the life of the baby to be born a product but the woman renders herself and her body as products as well. In all of this, medical professionals play a very important role. Therefore, they must uphold the Hippocratic Oath and offer their services in good conscience, being careful not to make their practice complicit in crimes.

Second, why do we argue that surrogacy should be outlawed? Most surrogate mothers belong to lower social classes. They often do not have access to legal protection or medical care. Furthermore, some surrogate mothers experience severe mental trauma after delivering their babies. A practice such as this that has more negative than positive effects on society should be prohibited.

Third, on what do we base our argument that it is still immoral to freely proceed with IVF after being informed about the problems of

egg and sperm donation? Even if women seeking motherhood are made fully aware of the problems yet still choose to undergo IVF, they must understand that there are others involved in their decision. Upon considering that the gestating baby is a person who, after birth and throughout his/her life, has a right to seek happiness, IVF should be prohibited due to the complications it creates for personal relationships and the negative effects it will have on society.

Fourth, must all research using eggs and sperm be prohibited? Not all of the research done on eggs and sperm should be accused of being immoral, but the current Korean bioethics law permits research on human embryos produced by the fertilization of eggs and sperm. It is immoral to kill a human embryo for research, even if such research benefits patients suffering from incurable diseases. The current bioethics law allows the donation of eggs and creation of embryos for the purpose of producing a pregnancy. On one hand, it prohibits broker activities, but on the other hand, it leaves open the door for a third party to donate eggs or sperm. In this way, a couple or an individual can have a child that is not their own.

There are many who question the morality of donating eggs for the pregnancy of others or for research purposes, yet the new regulation on bioethics and safety promotes such donations by allowing compensation for expenses. As a result, the poorest women will donate eggs. There are already many cases of surrogate mothers among indigent populations. By allowing egg donation without any regulation, women will be used as instruments, the child's right to happiness will be hindered, family relationships will be distorted, and doors will open to serious moral problems such as the manipulation and destruction of life. If embryos are implanted in a womb, they can become mature human beings. At the time of implantation, these embryos are innocents who have no way of protecting themselves. How could the killing of such human lives and utilization of the poor women as sources of eggs be moral? Behind such policies, there is economic rationale that must be corrected.

The current Korean bioethics law allows couples to have a child using the reproductive cells of another person. It also allows the



cloning of human embryos and other manipulations. These activities raise multitudinous ethical problems and should be corrected immediately with institutional measures to prevent criminal activities (Ku 2005). Any law on bioethics must put the value and dignity of humans at the center and regulate scientific activities in service of human beings.

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