

abhuman 105, 107, 114, 141–142 abortion nineteenth century 25–30 twentieth century 32–33	boundaries 'becoming' 141–142 context-based approach 163–165 gothic fiction 102–103
end of debate on? 199-203	legal uncertainty 82-94
grounds for 32–33, 202	liminality 139–141
legal contexts 152–154	'othering' 103–106
legal protections of the unborn 4	subject/object 89, 91–92, 93,
pre-nineteenth century 21–25	135–136, 146, 161
Abortion Act 1967	boundary work 92–94, 160
ectogenesis 201	Bourne see R v. Bourne
epigenesis 29–30	Bracton, Henry of 21–25
grounds for abortion 32-33, 202	Bratton, Henry (also known as Henry
introduction of 31–32	of Bracton) 21–25
'special status' 44–45	Brown, Louise 1, 38–41
actors	
donors' wishes 173–175, 183	cell nuclear replacement (CNR)
embryonic pathways 158–162	56–60
intent 166–167, 201	cloning see human cloning
admixed embryos 154–155	Coke, Edward, Sir 22
artificial womb technologies (AWTs) 9,	common law
178–179, 191–203	nineteenth century 28-29
assisted reproduction	twentieth century 30-33
artificial womb technologies 9,	artificial womb technologies
178–179, 191–203	193–195
morality 38–39	legal protections of the unborn 4
relationality 173–175	pre-nineteenth century 21–25
in vitro fertilisation 1, 38-41	Congenital Disabilities (Civil Liability)
in vitro gametogenesis 9, 186-191	Act 1976 33
	context-based approach
'becoming' 141-142, 159, 166	aims of 166–167
biological growth	artificial womb technologies 9,
gestation 198, 201	191–203
historical context 22-23	defining embryos 58-59, 66, 149,
preformation theory 20–21	163–165, 168–169
see also processual quality of the	dimensions of 165–166
embryo	embryo regulation 9
birth, meaning of 193–199	as framework 162-163, 179
Blackstone, William 23–24	future considerations 206–207



implications of 9	context-based approach 58-59, 66,
ʻlegal gap' 162, 169–176	149, 163–165, 168–169
legal pathways 151-152	as cyborgs 89-92
liminality 149, 152–162, 176–177	first historical references 22-23, 34
questions raised by 203-205	legal boundaries 82-94, 163-165
in vitro gametogenesis 9, 186–191	legal status 10–11
cyborgs 89–92, 160	liminality 123–136, 159–160
, ,	moral status 10–11, 12
danger to life 31–32	as processual entity 11-12, 13
definition of an embryo see embryos,	reproductive and research contexts
defining	152–158
disability literature 129–130	'special status' 6, 10-11
donors 173–175, 183	teleology of 1, 126–129
dual reproductive identity, embryos	treatment of 12, 15
163–164	see also embryos, defining; research
	using embryos
ectogenesis 178-179, 191-203	embryos, defining
embryo disposal (for research) 38-39,	based on Quintavalle (2001-2003)
48, 128	60-66
embryo formatus 19–21	changing boundaries 82-94
embryo freezing see frozen embryos	context-based approach 168-169
embryo <i>in utero</i> , terminology 18–19	disparity in use of terms 9-10
embryo <i>in vitro</i> , terminology 18–19	evolution in the law 18–19,
embryo informatus 19–21	28-29
embryo regulation	Human Fertilisation and
twentieth century 30-33	Embryology Act 1990 50-51,
context-based approach 9	66–67, 168–169
current legal context 3	
current legal context 5	epigenesis 20–21, 29–30
future context 38-41	epistemology 159
•	epistemology 159 ethics
future context 38-41	epistemology 159
future context 38–41 gothic framing 7–8 historical context 5–7, 19–30 law's evolution 5, 17–19	epistemology 159 ethics scientific advances in use of embryos 38–41
future context 38–41 gothic framing 7–8 historical context 5–7, 19–30 law's evolution 5, 17–19 as moral benchmark 41–47	epistemology 159 ethics scientific advances in use of embryos 38-41 in vitro gametogenesis 188-190
future context 38–41 gothic framing 7–8 historical context 5–7, 19–30 law's evolution 5, 17–19 as moral benchmark 41–47 pathways for regulation 13	epistemology 159 ethics scientific advances in use of embryos 38–41 in vitro gametogenesis 188–190 see also morality
future context 38–41 gothic framing 7–8 historical context 5–7, 19–30 law's evolution 5, 17–19 as moral benchmark 41–47 pathways for regulation 13 post-Warnock conceptions of the	epistemology 159 ethics scientific advances in use of embryos 38–41 in vitro gametogenesis 188–190 see also morality European Court of Human Rights
future context 38–41 gothic framing 7–8 historical context 5–7, 19–30 law's evolution 5, 17–19 as moral benchmark 41–47 pathways for regulation 13 post-Warnock conceptions of the embryo 47–49	epistemology 159 ethics scientific advances in use of embryos 38–41 in vitro gametogenesis 188–190 see also morality
future context 38–41 gothic framing 7–8 historical context 5–7, 19–30 law's evolution 5, 17–19 as moral benchmark 41–47 pathways for regulation 13 post-Warnock conceptions of the embryo 47–49 'special status' of embryos 6, 41–47	epistemology 159 ethics scientific advances in use of embryos 38–41 in vitro gametogenesis 188–190 see also morality European Court of Human Rights (ECHR) 4, 200–201
future context 38–41 gothic framing 7–8 historical context 5–7, 19–30 law's evolution 5, 17–19 as moral benchmark 41–47 pathways for regulation 13 post-Warnock conceptions of the embryo 47–49 'special status' of embryos 6, 41–47 treatment of the embryo 12, 15	epistemology 159 ethics scientific advances in use of embryos 38–41 in vitro gametogenesis 188–190 see also morality European Court of Human Rights (ECHR) 4, 200–201 family structures 188–190
future context 38–41 gothic framing 7–8 historical context 5–7, 19–30 law's evolution 5, 17–19 as moral benchmark 41–47 pathways for regulation 13 post-Warnock conceptions of the embryo 47–49 'special status' of embryos 6, 41–47 treatment of the embryo 12, 15 embryonic categories 152–158	epistemology 159 ethics scientific advances in use of embryos 38–41 in vitro gametogenesis 188–190 see also morality European Court of Human Rights (ECHR) 4, 200–201 family structures 188–190 feedback loops, regulation 131, 133
future context 38–41 gothic framing 7–8 historical context 5–7, 19–30 law's evolution 5, 17–19 as moral benchmark 41–47 pathways for regulation 13 post-Warnock conceptions of the embryo 47–49 'special status' of embryos 6, 41–47 treatment of the embryo 12, 15 embryonic categories 152–158 embryonic evolution 2–3	epistemology 159 ethics scientific advances in use of embryos 38–41 in vitro gametogenesis 188–190 see also morality European Court of Human Rights (ECHR) 4, 200–201  family structures 188–190 feedback loops, regulation 131, 133 female body
future context 38–41 gothic framing 7–8 historical context 5–7, 19–30 law's evolution 5, 17–19 as moral benchmark 41–47 pathways for regulation 13 post-Warnock conceptions of the embryo 47–49 'special status' of embryos 6, 41–47 treatment of the embryo 12, 15 embryonic categories 152–158 embryonic evolution 2–3 see also processual quality of the	epistemology 159 ethics scientific advances in use of embryos 38–41 in vitro gametogenesis 188–190 see also morality European Court of Human Rights (ECHR) 4, 200–201  family structures 188–190 feedback loops, regulation 131, 133 female body dissociation of embryos from women
future context 38–41 gothic framing 7–8 historical context 5–7, 19–30 law's evolution 5, 17–19 as moral benchmark 41–47 pathways for regulation 13 post-Warnock conceptions of the embryo 47–49 'special status' of embryos 6, 41–47 treatment of the embryo 12, 15 embryonic categories 152–158 embryonic evolution 2–3 see also processual quality of the embryo	epistemology 159 ethics scientific advances in use of embryos 38–41 in vitro gametogenesis 188–190 see also morality European Court of Human Rights (ECHR) 4, 200–201  family structures 188–190 feedback loops, regulation 131, 133 female body dissociation of embryos from women 107–110
future context 38–41 gothic framing 7–8 historical context 5–7, 19–30 law's evolution 5, 17–19 as moral benchmark 41–47 pathways for regulation 13 post-Warnock conceptions of the embryo 47–49 'special status' of embryos 6, 41–47 treatment of the embryo 12, 15 embryonic categories 152–158 embryonic evolution 2–3 see also processual quality of the embryo embryonic pathways 152–158,	epistemology 159 ethics scientific advances in use of embryos 38–41 in vitro gametogenesis 188–190 see also morality European Court of Human Rights (ECHR) 4, 200–201  family structures 188–190 feedback loops, regulation 131, 133 female body dissociation of embryos from women 107–110 physical placement of embryos
future context 38–41 gothic framing 7–8 historical context 5–7, 19–30 law's evolution 5, 17–19 as moral benchmark 41–47 pathways for regulation 13 post-Warnock conceptions of the embryo 47–49 'special status' of embryos 6, 41–47 treatment of the embryo 12, 15 embryonic categories 152–158 embryonic evolution 2–3 see also processual quality of the embryo embryonic pathways 152–158, 169–170	epistemology 159 ethics scientific advances in use of embryos 38–41 in vitro gametogenesis 188–190 see also morality European Court of Human Rights (ECHR) 4, 200–201  family structures 188–190 feedback loops, regulation 131, 133 female body dissociation of embryos from women 107–110 physical placement of embryos 111–112
future context 38–41 gothic framing 7–8 historical context 5–7, 19–30 law's evolution 5, 17–19 as moral benchmark 41–47 pathways for regulation 13 post-Warnock conceptions of the embryo 47–49 'special status' of embryos 6, 41–47 treatment of the embryo 12, 15 embryonic categories 152–158 embryonic evolution 2–3 see also processual quality of the embryo embryonic pathways 152–158, 169–170 embryonic stem cells 62	epistemology 159 ethics scientific advances in use of embryos 38–41 in vitro gametogenesis 188–190 see also morality European Court of Human Rights (ECHR) 4, 200–201  family structures 188–190 feedback loops, regulation 131, 133 female body dissociation of embryos from women 107–110 physical placement of embryos 111–112 fertilisation
future context 38–41 gothic framing 7–8 historical context 5–7, 19–30 law's evolution 5, 17–19 as moral benchmark 41–47 pathways for regulation 13 post-Warnock conceptions of the embryo 47–49 'special status' of embryos 6, 41–47 treatment of the embryo 12, 15 embryonic categories 152–158 embryonic evolution 2–3 see also processual quality of the embryo embryonic pathways 152–158, 169–170 embryonic stem cells 62 embryos	epistemology 159 ethics scientific advances in use of embryos 38–41 in vitro gametogenesis 188–190 see also morality European Court of Human Rights (ECHR) 4, 200–201  family structures 188–190 feedback loops, regulation 131, 133 female body dissociation of embryos from women 107–110 physical placement of embryos 111–112 fertilisation cell nuclear replacement
future context 38–41 gothic framing 7–8 historical context 5–7, 19–30 law's evolution 5, 17–19 as moral benchmark 41–47 pathways for regulation 13 post-Warnock conceptions of the embryo 47–49 'special status' of embryos 6, 41–47 treatment of the embryo 12, 15 embryonic categories 152–158 embryonic evolution 2–3 see also processual quality of the embryo embryonic pathways 152–158, 169–170 embryonic stem cells 62	epistemology 159 ethics scientific advances in use of embryos 38–41 in vitro gametogenesis 188–190 see also morality European Court of Human Rights (ECHR) 4, 200–201  family structures 188–190 feedback loops, regulation 131, 133 female body dissociation of embryos from women 107–110 physical placement of embryos 111–112 fertilisation



220

INDEX

fertility services 188-189 fetuses, defining 18-19 fiction, gothic themes 101-103 fourteen-day rule defining embryos 168-169 frozen embryos 130-131 introduction of 52-53 liminality and law reform 145-146 permanent liminality 155 recent scientific advances 179-180 revisiting the rule 180-186 'special status' of embryos 80-81, 178 - 179Frankenstein 101, 110 frozen embryos fourteen-day rule 183 Human Fertilisation and Embryology Act 1990 51-52 legal position 4 permanent liminality 130-131 gametogenesis 178-179, 186-191 gastrulation 43-44 genetic parents, rights of 199-203 gestation 198, 201 gothic fiction 101-103, 141 gothic framing book structure 7 embryo regulation 7-8 'legal gap' 4-5, 7-8, 97, 114-115, lessons from 112-116 liminality 112-116, 129-132, 136-137, 145-146 marginalisation 137–139 otherness of embryos 106-112 gothic self accounts of the postmodern 'Other' 103-106 as concept 99-100 and the liberal self 105-106 liminality 129-130 literary birth 101-103 monstrosity 99-100, 101-103 postmodernism 100-101

historical context nineteenth century 25-30 twentieth century 30-33 early Christian religious philosophy 19 - 21first child born through IVF 1 law's evolution 17-19 pre-nineteenth century 21–25 processuality of law 33-36 House of Commons Science and Technology Committee (HCSTC) 60 - 66human cloning cell nuclear replacement 56-60 Human Fertilisation and Embryology Act 1990 53 regulation of embryos 154-155 reproductive vs. therapeutic 58-59, 80 - 81Human Fertilisation and Embryology Act 1990 amendments 66-69 defining embryos 50-51, 66-67, 168-169 influence of 1-2 'legal gap' 6, 95 liminality 4, 206-207 processuality of law 37 provisions and implementation 49 - 56reforms proposed 75–79 Warnock Report's influence 10-11, 41-47, 74-76 Human Fertilisation and Embryology Act 2008 amending the 1990 Act 66-69 nature, source, and extent of embryos 79-82 Human Fertilisation and Embryology Authority (HFEA) 40-41, 57, 60-66, 86-87, 130-131 Human Fertilisation and Embryology (Mitochondrial Donation) Regulations 2015 69 human life birth, meaning of 193-199 early Christian religious philosophy

19 - 21

gradualist approach 44-45



INDEX 221

legal boundaries 34 'special status' of embryos 72-79 legal history 18 uncertainties 72-79, 94-96 scientific advances in use of embryos see also permanent liminality legal status 'stages of 18 context-based understandings 58-59 Warnock Report 45 embryos as unique category 70 Human Reproductive Cloning Act as legal tool 78 2001 56-57, 61, 63 liminality 197-198 hybrid embryos 154-155 and moral status 10-11 multiple statuses 37 induced pluripotent stem cells (iPSCs) pathways for regulation 13 186 - 191reproductive and research contexts Infant Life Preservation Act 1929 152 - 15830-31, 32, 33, 34-35 'special status' of embryos 6, 72-79 initiation rites 118-123 Warnock Report 38 'intellectual gap' see 'legal gap' legal subjecthood 113-114 intent, context-based approach life see human life 166-167, 201 liminal entities 2-3 liminal law 132-136 legal boundaries liminality 13 fourteen-day rule 183-185 analytical framework 3-5 embryos 82-94, 163-165 'becoming' 141-142 human life 34 book structure 5-9 'legal boundedness' 2-3 between boundaries 139-141 legal definitions 63-64; context-based approach 149, see also under embryos 152-162, 176-177 'legal embryos' 85, 207 donors 174-175 legal framework for embryos; see ectogenesis 196-201 embryo regulation embryos 123-136, 159-160 'legal gap' experiencing 142-144 closing the gap 169–176 feedback loops, regulation 131, 133 context-based approach 162, gothic framing 112-116, 129-132, 169 - 176136-137, 145-146 gothic framing 4-5, 7-8, 97, legal framework 176-177 as lens 97-98, 117-118, 136-137 114-115, 169 gothic self 100-101 marginalisation 137-139 Human Fertilisation and navigating through 144-147 purgatorial anxiety 124-125, Embryology Act 1990 6, 95 legal boundedness 2-3 134-135, 139-140 legal personhood 193-199 relationality 142-144 legal stasis rites of passage 118-123 changing boundaries 82-94 schismogenesis 121-122, 155 clarifications in nature, source, and 'tricksters' 121-123 extent 79-82 see also thresholds embryo research 5-7 'liminality of things' 135-136, 146 gothic framing 115-116 literature, gothic fiction 101-103, moving beyond 146

processuality of law 94-95

Lord Ellenborough's Act 1803 25-26



marginalisation 137-139	permanent liminality
materiality 160	fourteen-day rule 155
medical futility 153	context-based approach 175
medicalisation of pregnancy 28-29,	in current law 8
46–47	frozen embryos 127-128, 130-131
mimesis 121–123, 133	gothic framing 129–130
mitochondrial replacement therapy	liminal law 132-136
69, 75	meaning of 121
monstrosity 99-100, 101-103, 138	moving beyond 146
see also gothic framing	purgatorial anxiety 139-140
'the monstrous feminine' 109-110	relationality 144
moral status	teleology of embryos 127-128,
embryos 12	129–132
gradualist approach 44-45	person/subject 89
and legal status 10–11	personhood, significance of birth
liminality 197–198	193–199
see also human life	physiological visibility 32
morality	postmodernism
assisted conception 38–39	embryos 4–5
boundaries and the fourteen-day rule	gothic framing 4–5
183–185	'gothic' framing 7
embryo disposal 38-39	gothic self 100–101
legislation as a benchmark 41-47	pre-partus formatus 25
uncertainties 171	'preformation' theory 20–21, 29–30
utilitarianism 44–45	pregnancy
mother's rights 152–154, 199–203	context-based understandings
	152–154
nasciturus principle 194–195	danger to life 31–32
neonatal intensive care 192–193	medicalisation of 28–29, 46–47
Offences Against the Borson Act	physical placement of embryos 111–112
Offences Against the Person Act 1828 26	premonitions 111–112
Offences Against the Person Act 1837	'quickening' vs. preformation
26–27	19–21
Offences Against the Person Act 1861	'primitive streak' 43–44,
28, 31–32	46–47
ontology 159	privacy, right to 200-201
'othering'	pro-life movement
'becoming' 141–142	fourteen-day rule 52–53
gothic framing of embryos 4–5,	post-Warnock conceptions of the
106–112	embryo 47–49
marginalisation 137-139	'process', meaning of 11–12
postmodernism and the gothic	processual quality of the embryo
103–106	'becoming' 141–142
	embryonic evolution 2-3
parental rights, abortion debate	future considerations 203-206
199–203	gestation 198
partus formatus 25	historical context 22-23



INDEX 223

Human Fertilisation and Embryology Act 1990 50-51, 54 - 56legal boundaries 82-94 liminality 118 preformation theory 20-21 'primitive streak' 43-44, 46-47 'quickening' 19–31, 34–35 uncertainties 69-70 processuality of law application to embryos 13 contemporary context 37 distinction from progressive 19 historical context 21-25, 33 - 36Human Fertilisation and Embryology Act 1990 37, 47 legal stasis 94-95 liminal law 132-136 meaning of 12 medicalisation of pregnancy 28 - 29uncertainties 69-70 Warnock Report's legacy 74-76 protections of the unborn birth, significance of 193-199 evolution in the law 4 gradualist approach 44-45 historical context 25, 35-36 Human Fertilisation and Embryology Act 1990 42-43 post-Warnock conceptions of the embryo 47-49 purgatorial anxiety 124-125, 134-135, 139 - 140

'quickening'
nineteenth century 25–30
twentieth century 30–31, 34–35
early Christian religious philosophy
19–21
legal boundaries 88
pre-nineteenth century 21–25
'primitive streak' 43–44, 46–47
Quintavalle (2001–2003)
case details 56–60
defining the embryo 60–66
inflexibility of the law 135

R v. Bourne 31-33 regulation see embryo regulation regulatory compression 131, 142-143 regulatory purgatory 134, 139 relationality abortion debate 201 assisted reproduction and research 173 - 175'becoming' 166 liminality 142-144 materiality 160 reproductive cloning 58-59, 80-81 see also human cloning reproductive embryos 152-154, 155-158, 176, 183 reproductive technologies see artificial womb technologies (AWTs); in vitro fertilisation (IVF); in vitro gametogenesis (IVG) research artefacts 155, 164, 167, 172 - 173research embryos (in contrast to reproductive embryos) 154-158, 176, 183 research using embryos donors' wishes 173-175 frozen embryos 51-52, 130-131 gradualist approach 44-45 law reform 73-74 legal stasis 5-7 liminality and law reform 145-146 nature, source, and extent of embryos 79-82 post-Warnock conceptions of the embryo 47-49 recent scientific advances 179 - 180types of embryo 53 see also fourteen-day rule researchers as actors 158-162 respect for the embryo 52, 73-74, 164-165, 197 rites of passage 118-123

schismogenesis 121–122, 155 science, public view of 102–103 scientific research *see* research using embryos



224

Cambridge University Press 978-1-108-84410-9 — The Human Embryo In Vitro Catriona A. W. McMillan Index More Information

> scientific research (cont.) subjecthood Scotland, grounds for abortion experiencing liminality 142-144 32 - 33legal 113-114 selfhood legal subjecthood 113-114 technical visibility 32 liberal vs. gothic 105–106 technology context-based approach 9 see also gothic self sexual intercourse, age of consent gothic framing 110-111 180 - 181legal boundaries 91-92 social considerations, protections of the teleology of embryos unborn 35-36 context-based approach 156, the soul, early Christian religious 166-167, 175-176 philosophy 19-21 do embryos have a 'telos'? 126-129 spare embryos 43-44, 110, 156, embryonic pathways 152-158, 168-169, 173-175 169-170 'special status' of embryos influence of technology 1 14-day rule 80-81, 178-179 intent 166-167 binary understanding 172-173 termination see abortion clarifications in nature, source, and therapeutic cloning 58-59, 80-81 extent 71-72, 79-82 see also human cloning contemporary context 37 thing/object 89 context-based approach 152-162, thresholds 171-173 fourteen-day rule revisited embryos as unique category 70 182 - 185as fundamental principle 42-43, 81 age of consent for sexual intercourse gothic framing 114-115 180 - 181Human Fertilisation and artificial womb technologies (AWTs) Embryology Act 1990 68-69 191-203 Human Fertilisation and future considerations 204 Embryology Act 2008 79-82 in vitro gametogenesis (IVG) legal boundaries 82-94 186-191 legal framework 6 see also liminality 'tricksters' 121-123 legal stasis 72-79 liminal law 133 liminality 118 ultrasound, invention of 32 moral and legal status 10-11 Unborn Children (Protection) Bill 1985 multiple statuses 37 'the uncanny' 103-105, 106-107, Warnock Report 41-47, 68-69 stem cell research (SCR) 139 - 140defining terms 77-78 see also gothic framing donors' wishes 173-175 uncertainty in the law 69-70, induced pluripotent stem cells 94-96 186-191 future considerations 206-207 teleology of embryos 126-127 legal boundaries 82-94 stethoscopes, invention of 27 'legal gap' 95, 171 liminal law 132-136 stillbirth 194 liminality 176-177 subject and object, legal distinction 89, 91-92, 93, 135-136, 146, 161 utilitarianism 44-45



INDEX 225

van Gennep, Arnold 3–4, 5, 8, 12, 119–120 viability, twentieth-century law 30–31 visibility twentieth-century 35–36 historical context 32, 33–34 in vitro fertilisation (IVF) 1, 38–41 in vitro gametogenesis (IVG) 9, 186–191

Warnock Report
fourteen-day rule 52–53
Human Fertilisation and
Embryology Act 1990 as
influenced by 10–11, 41–47, 74–76
legacy 74–76
moral issues and regulating for the
future 38–41

post-Warnock conceptions of the embryo 47-49 publishing of 38 respect for the embryo 52, 164-165, 197 'special status' of embryos 10-11, 41-47, 68-69 the womb artificial womb technologies 9, 178-179, 191-203 dissociation of embryos from women 107 - 110implantation 67-68 physical placement of embryos 111-112 women see female body; mother's rights

zygotes 84