

Spring 1998

The Wisdom of Repugnance: Why We Should Ban the Cloning of Humans

Leon R. Kass

Follow this and additional works at: <https://scholar.valpo.edu/vulr>



Part of the [Law Commons](#)

Recommended Citation

Leon R. Kass, *The Wisdom of Repugnance: Why We Should Ban the Cloning of Humans*, 32 Val. U. L. Rev. 679 (1998).

Available at: <https://scholar.valpo.edu/vulr/vol32/iss2/12>

This Symposium is brought to you for free and open access by the Valparaiso University Law School at ValpoScholar. It has been accepted for inclusion in Valparaiso University Law Review by an authorized administrator of ValpoScholar. For more information, please contact a ValpoScholar staff member at scholar@valpo.edu.



THE WISDOM OF REPUGNANCE: WHY WE SHOULD BAN THE CLONING OF HUMANS

LEON R. KASS*

I. INTRODUCTION

Our habit of delighting in news of scientific and technological breakthroughs has been sorely challenged by the birth announcement of a sheep named Dolly. Though Dolly shares with previous sheep the “softest clothing, woolly, bright,” William Blake’s question, “Little Lamb, who made thee?”¹ has for her a radically different answer: Dolly was, quite literally, made. She is the work not of nature or nature’s God but of man, an Englishman, Ian Wilmut, and his fellow scientists. What’s more, Dolly came into being not only asexually—ironically, just like “He [who] calls Himself a Lamb”²—but also as the genetically identical copy (and the perfect incarnation of the form or blueprint) of a mature ewe, of whom she is a clone. This long-awaited yet not quite expected success in cloning a mammal raised immediately the prospect—and the specter—of cloning human beings: “I a child, and thou a lamb,”³ despite our differences, have always been equal candidates for creative making, only now, by means of cloning, we may both spring from the hand of man playing at being God.

After an initial flurry of expert comment and public consternation, with opinion polls showing overwhelming opposition to cloning human beings, President Clinton ordered a ban on all federal support for human cloning research (even though none was being supported) and charged the National Bioethics Advisory Commission (NBAC or Commission) to report in ninety days on the ethics of human cloning research. The Commission (an eighteen-member panel, evenly balanced between scientists and non-scientists, appointed by the President and reporting to the National Science and Technology Council) invited testimony from scientists, religious thinkers, and bioethicists, as well as from

* The Addie Clark Harding Professor, The College and The Committee on Social Thought, The University of Chicago; M.D., The University of Chicago, 1962; Ph.D. [Biochemistry], Harvard University, 1967. An earlier version of this article was published in *THE NEW REPUBLIC*, June 2, 1997, at 17. The article represents a considerable expansion of testimony presented before the National Bioethics Advisory Commission, Mar. 14, 1997.

1. William Blake, *The Lamb*, in *AN OXFORD ANTHOLOGY OF ENGLISH POEMS* 535 (1956).
2. *Id.*
3. *Id.*

the general public. In its report, issued in June, 1997, the Commission concluded that attempting to clone a human being was "at this time . . . morally unacceptable"; recommended continuing the President's moratorium on the use of federal funds to support the cloning of humans; and called for federal legislation to prohibit anyone from attempting (during the next three to five years) to create a child through cloning.⁴

Even before the Commission reported, Congress was poised to act. Bills to prohibit the use of federal funds for human cloning research have been introduced in the House of Representatives⁵ and the Senate⁶; and one bill, in the House, would make it illegal "for any person to use a human somatic cell for the process of producing a human clone."⁷ A fateful decision is at hand. To clone or not to clone a human being is no longer an academic question.

II. TAKING CLONING SERIOUSLY, THEN AND NOW

Cloning first came to public attention roughly thirty years ago, following the successful asexual production, in England, of a clutch of tadpole clones by the technique of nuclear transplantation. The individual largely responsible for bringing the prospect and promise of human cloning to public notice was Joshua Lederberg, a Nobel Laureate geneticist and a man of large vision. In 1966, Lederberg wrote a remarkable article in *The American Naturalist* detailing the eugenic advantages of human cloning and other forms of genetic engineering, and the following year he devoted a column in *The Washington Post*, where he wrote regularly on science and society, to the prospect of human cloning.⁸ He suggested that cloning could help us overcome the unpredictable variety that still

4. NATIONAL BIOETHICS ADVISORY COMMISSION, CLONING HUMAN BEINGS, REPORT AND RECOMMENDATIONS OF THE NATIONAL BIOETHICS ADVISORY COMMISSION iii-iv (1997) [hereinafter NBAC REPORT].

5. See, e.g., H.R. 922, 105th Cong. (1997); H.R. 923, 105th Cong. (1997).

6. See, e.g., S. 368, 105th Cong. (1997).

7. H.R. 923.

8. See Joshua Lederberg, *Experimental Genetics and Human Evolution*, 100 AM. NATURALIST 519 (1996); Joshua Lederberg, *Unpredictable Variety Still Rules Human Reproduction*, WASH. POST, Sept. 30, 1967, at A17.

rules human reproduction and allow us to benefit from perpetuating superior genetic endowments. These writings sparked a small public debate in which I became a participant. At the time a young researcher in molecular biology at the National Institutes of Health (NIH), I wrote a reply to the *Post*, arguing against Lederberg's amoral treatment of this morally weighty subject and insisting on the urgency of confronting a series of questions and objections, culminating in the suggestion that "the programmed reproduction of man will, in fact, dehumanize him."⁹

Much has happened in the intervening years. It has become harder, not easier, to discern the true meaning of human cloning. We have in some sense been softened up to the idea—through movies, cartoons, jokes, and intermittent commentary in the mass media, some serious, most lighthearted. We have become accustomed to new practices in human reproduction: not just *in vitro* fertilization (IVF), but also embryo manipulation, embryo donation, and surrogate pregnancy. Animal biotechnology has yielded transgenic animals and a burgeoning science of genetic engineering, easily and soon to be transferable to humans.

Even more important, changes in the broader culture make it now vastly more difficult to express a common and respectful understanding of sexuality, procreation, nascent life, family, and the meaning of motherhood, fatherhood, and the links between the generations. Twenty-five years ago, abortion was still largely illegal and thought to be immoral, the sexual revolution (made possible by the extramarital use of the pill) was still in its infancy, and few had yet heard about the reproductive rights of single women, homosexual men, and lesbians. (Never mind shameless memoirs about one's own incest!) Then one could argue, without embarrassment, that the new technologies of human reproduction—babies without sex—and their confounding of normal kin relations (who is the mother: the egg donor, the surrogate who carries and delivers, or the one who rears?) would "undermine[] the justification and support which biological parenthood gives to the monogamous marriage."¹⁰ Today, defenders of stable, monogamous marriage risk charges of giving offense to those adults who are living in "new family forms" or to those children who, even without the benefit of assisted reproduction, have acquired either three or four parents or one or none at all. Today, one must even apologize for voicing opinions that twenty-five years ago were nearly universally regarded as the core of our culture's wisdom on these matters. In a world whose once-given natural boundaries are blurred by technological change and whose moral boundaries are

9. Leon R. Kass, *Genetic Tampering*, WASH. POST, Nov. 3, 1967, at A20. See also Leon R. Kass, *Making Babies—The New Biology and the 'Old' Morality*, PUB. INTEREST, Winter 1972, at 18 [hereinafter Kass, *Making Babies*].

10. Kass, *Making Babies*, *supra* note 9, at 50.

seemingly up for grabs, it is much more difficult to make persuasive the still-compelling case against cloning human beings. As Raskolnikov put it, "man gets used to everything—the beast!"¹¹

Indeed, perhaps the most depressing feature of the discussions that immediately followed the news about Dolly was their ironical tone, their genial cynicism, their moral fatigue: *An Udder Way of Making Lambs*,¹² *Who Will Cash in on Breakthrough in Cloning?*,¹³ and *Is Cloning a Baaad Idea?*¹⁴ Gone from the scene are the wise and courageous voices of Theodosius Dobzhansky (genetics), Hans Jonas (philosophy), and Paul Ramsey (theology) who, only twenty-five years ago, all made powerful moral arguments against ever cloning a human being.¹⁵ We are now too sophisticated for such argumentation; we wouldn't be caught in public with a strong moral stance, never mind an absolutist one. We are all, or almost all, post-modernists now.

Cloning turns out to be the perfect embodiment of the ruling opinions of our new age. Thanks to the sexual revolution, we are able to deny in practice, and increasingly in thought, the inherent procreative teleology of sexuality itself. But, if sex has no intrinsic connection to generating babies, babies need have no necessary connection to sex. Thanks to feminism and the gay rights movement, we are increasingly encouraged to treat the natural heterosexual difference and its preeminence as a matter of "cultural construction." But if male and female are not normatively complementary and generatively significant, babies need not come from male and female complementarity. Thanks to the prominence and acceptability of divorce and out-of-wedlock births, stable, monogamous marriage as the ideal home for procreation is no longer the agreed-upon cultural norm. For this new dispensation, the clone is the ideal emblem: the ultimate "single-parent child."

Thanks to our belief that all children should be *wanted* children (the more high-minded principle we use to justify contraception and abortion), sooner or later only those children who fulfill our wants will be fully acceptable. Through cloning, we can work our wants and wills on the very identity of our children, exercising control as never before. Thanks to modern notions of individualism

11. FYODOR DOSTOYEVSKY, *CRIME AND PUNISHMENT* 44 (David Magarshack trans., Penguin Books 1966).

12. Colin Stewart, *Nuclear Transplantation: An Udder Way of Making Lambs*, 385 *NATURE* 769 (1997).

13. Robert Langreth & Michael Waldholz, *Who Will Cash in on Breakthrough in Cloning?*, *WALL ST. J.*, Feb. 25, 1997, at B1.

14. Amanda Vogt, *Is Cloning a Baaad Idea?*, *CHI. TRIB.*, Mar. 4, 1997, (Kidnews), at 3.

15. See, e.g., HANS JONAS, *Biological Engineering—A Preview*, in *PHILOSOPHICAL ESSAYS: FROM ANCIENT CREED TO TECHNOLOGICAL MAN* 153-63 (1974); PAUL RAMSEY, *Shall We Clone a Man?*, in *FABRICATED MAN: THE ETHICS OF GENETIC CONTROL* 60-103 (1970).

and the rate of cultural change, we see ourselves not as linked to ancestors and defined by traditions, but as projects for our own self-creation, not only as self-made men but also man-made selves; and self-cloning is simply an extension of such rootless and narcissistic self-re-creation.

Unwilling to acknowledge our debt to the past and unwilling to embrace the uncertainties and the limitations of the future, we have a false relation to both: cloning personifies our desire fully to control the future, while being subject to no controls ourselves. Enchanted and enslaved by the glamour of technology, we have lost our awe and wonder before the deep mysteries of nature and of life. We cheerfully take our own beginnings in our hands and, like the last man, we blink.

Part of the blame for our complacency lies, sadly, with the field of bioethics itself, and its claim to expertise in these moral matters. Bioethics was founded by people who understood that the new biology touched and threatened the deepest matters of our humanity: bodily integrity, identity and individuality, lineage and kinship, freedom and self-command, eros and aspiration, and the relations and strivings of body and soul. With its capture by analytic philosophy, however, and its inevitable routinization and professionalization, the field has by and large come to content itself with analyzing moral arguments, reacting to new technological developments, and taking on emerging issues of public policy, all performed with a naive faith that the evils we fear can all be avoided by compassion, regulation, and a respect for autonomy. Bioethics has made some major contributions in the protection of human subjects and in other areas where personal freedom is threatened; but its practitioners, with few exceptions, have turned the big human questions into pretty thin gruel.

One reason for this is that the piecemeal formation of public policy tends to grind down large questions of morals into small questions of procedure. Many of the country's leading bioethicists have served on national commissions or state task forces and advisory boards, where, understandably, they have found utilitarianism to be the only ethical vocabulary acceptable to all participants in discussing issues of law, regulation, and public policy. As many of these commissions have been either officially under the aegis of NIH or the Health and Human Services Department, or otherwise dominated by powerful voices for scientific progress, the ethicists have for the most part been content, after some "values clarification" and wringing of hands, to pronounce their blessings upon the inevitable. Indeed, it is the bioethicists, not the scientists, who are now the most articulate defenders of human cloning: the two witnesses

testifying before the NBAC in favor of cloning human beings were bioethicists,¹⁶ eager to rebut what they regard as the irrational concerns of those of us in opposition. We have come to expect from the "experts" an accommodationist ethic that will rubber-stamp all biomedical innovation, in the mistaken belief that all other goods must bow down before the gods of better health and scientific advance. Regrettably, as we shall see near the end of this Article, the report of the present Commission, though better than its predecessors, is finally not an exception.

If we are to correct our moral myopia, we must first of all persuade ourselves not to be complacent about what is at issue here. Human cloning, though it is in some respects continuous with previous reproductive technologies, also represents something radically new, in itself and in its easily foreseeable consequences. The stakes are very high indeed. I exaggerate, but in the direction of the truth, when I insist that we are faced with having to decide nothing less than whether human procreation is going to remain human, whether children are going to be made rather than begotten, whether it is a good thing, humanly speaking, to say yes in principle to the road which leads (at best) to the dehumanized rationality of *Brave New World*.¹⁷ This is not business as usual, to be fretted about for a while but finally to be given our seal of approval. We must rise to the occasion and make our judgments as if the future of our humanity hangs in the balance. For so it does.

III. THE STATE OF THE ART

If we should not underestimate the significance of human cloning, neither should we exaggerate its imminence or misunderstand just what is involved. The procedure is conceptually simple. The nucleus of a mature but unfertilized egg is removed and replaced with a nucleus obtained from a specialized cell of an adult (or fetal) organism (in Dolly's case, the donor nucleus came from mammary gland epithelium). Because almost all the hereditary material of a cell is contained within its nucleus, the renucleated egg and the individual into which this egg develops are genetically identical to the organism that was the source of the transferred nucleus. An unlimited number of genetically identical individuals—clones—could be produced by nuclear transfer. In principle, any

16. See Ruth Macklin, *Possible Benefits of Cloning Humans*, BIOLAW, June 1997, at S130 [hereinafter Macklin, BIOLAW]; Ruth Macklin, *Possible Benefits of Cloning Humans* (visited Mar. 18, 1998) <<http://www.all.org/nbac/970313b.htm>> (testimony presented before the National Bioethics Advisory Commission, Washington, D.C., Mar. 14, 1997). See also John A. Robertson, *A Ban on Cloning and Cloning Research Is Unjustified*, BIOLAW, June 1997, at S133 [hereinafter Robertson, BIOLAW]; John A. Robertson, *A Ban on Cloning and Cloning Research Is Unjustified* (visited Mar. 18, 1998) <<http://www.all.org/nbac/970313b.htm>> (testimony presented before the National Bioethics Advisory Commission, Washington, D.C., Mar. 14, 1997).

17. ALDOUS HUXLEY, *BRAVE NEW WORLD* (1946).

person, male or female, newborn or adult, could be cloned, and in any quantity. With laboratory cultivation and storage of tissues, cells outliving their sources make it possible even to clone the dead.

The technical stumbling block, overcome by Wilmut and his colleagues, was to find a means of reprogramming the state of the DNA in the donor cells, reversing its differentiated expression and restoring its full totipotency, so that it could again direct the entire process of producing a mature organism. Now that this problem has been solved, we should expect a rush to develop cloning for other animals, especially livestock, in order to propagate in perpetuity the champion meat or milk producers. Though exactly how soon someone will succeed in cloning a human being is anybody's guess, Wilmut's technique, almost certainly applicable to humans, makes *attempting* the feat an imminent possibility.

Yet some cautions are in order, and some possible misconceptions need correcting. For a start, cloning is not Xeroxing. As has been reassuringly reiterated, the clone of Mel Gibson, though his genetic double, would enter the world hairless, toothless, and peeing in his diapers, just like any other human infant. Moreover, the success rate, at least at first, will probably not be very high: the British scientists transferred 277 adult nuclei into enucleated sheep eggs, and implanted twenty-nine clonal embryos, but they achieved the birth of only one live lamb clone. For this reason, among others, it is unlikely that, at least for now, the practice would be very popular, and there is no immediate worry of mass-scale production of multicopies. The need of repeated surgery to obtain eggs and, more crucially, of numerous borrowed wombs for implantation will surely limit use, as will the expense; besides, almost everyone who is able will doubtless prefer nature's sexier way of conceiving.

Still, for the tens of thousands of people already sustaining over 200 assisted-reproduction clinics in the United States and already availing themselves of IVF, intracytoplasmic sperm injection, and other techniques of assisted reproduction, cloning would be an option with virtually no added fuss (especially when the success rate improves). Should commercial interests develop in "nucleus-banking," as they have in sperm-banking; should famous athletes or other celebrities decide to market their DNA the way they now market their autographs and just about everything else; should techniques of embryo and germline genetic testing and manipulation arrive as anticipated, increasing the use of laboratory assistance in order to obtain "better" babies—should all this come to pass, then cloning, if it is permitted, could become more than a marginal practice simply on the basis of free reproductive choice, even without any social encouragement to upgrade the gene pool or to replicate superior types. Moreover, if laboratory research on human cloning proceeds, even without any intention to produce cloned humans, the existence of cloned human

embryos in the laboratory, created to begin with only for research purposes, would surely pave the way for later baby-making implantations.

In anticipation of human cloning, apologists and proponents have already made clear possible uses of the perfected technology, ranging from the sentimental and compassionate to the grandiose. They include: providing a child for an infertile couple; "replacing" a beloved spouse or child who is dying or has died; avoiding the risk of genetic disease; permitting reproduction for homosexual men and lesbians who want nothing sexual to do with the opposite sex; securing a genetically identical source of organs or tissues perfectly suitable for transplantation; getting a child with a genotype of one's own choosing, not excluding oneself; replicating individuals of great genius, talent, or beauty—having a child who really could "be like Mike"; and creating large sets of genetically identical humans suitable for research on, for instance, the question of nature versus nurture, or for special missions in peace and war (not excluding espionage), in which using identical humans would be an advantage. Most people who envision the cloning of human beings, of course, want none of these scenarios. That they cannot say why is not surprising. What is surprising, and welcome, is that, in our cynical age, they are saying anything at all.

IV. THE WISDOM OF REPUGNANCE

"Offensive." "Grotesque." "Revoltng." "Repugnant." "Repulsive." These are the words most commonly heard regarding the prospect of human cloning. Such reactions come both from the man or woman in the street and from intellectuals, from believers and atheists, from humanists and scientists. Even Dolly's creator has said he "would find it offensive"¹⁸ to clone a human being.

People are repelled by many aspects of human cloning. They recoil from the prospect of the mass production of human beings, with large clones of look-alikes, compromised in their individuality; the idea of father-son or mother-daughter twins; the bizarre prospects of a woman giving birth to and rearing a genetic copy of herself, her spouse, or even her deceased father or mother; the grotesqueness of conceiving a child as an exact replacement for another who has died; the utilitarian creation of embryonic genetic duplicates of oneself, to be frozen away or created when necessary, in case of need for homologous tissues or organs for transplantation; the narcissism of those who would clone themselves and the arrogance of others who think they know who

18. Dave Anderson, *Sports of the Times: Could Jordan Be Cloned? Not Exactly*, N.Y. TIMES, Feb. 28, 1997, at B7.

deserves to be cloned or which genotype any child-to-be should be thrilled to receive; the Frankensteinian hubris to create human life and increasingly to control its destiny; man playing God. Almost no one finds any of the suggested reasons for human cloning compelling; almost everyone anticipates its possible misuses and abuses. Moreover, many people feel oppressed by the sense that there is probably nothing we can do to prevent it from happening. This makes the prospect all the more revolting.

Revulsion is not an argument; and some of yesterday's repugnances are today calmly accepted—though, one must add, not always for the better. In crucial cases, however, repugnance is the emotional expression of deep wisdom, beyond reason's power fully to articulate it. Can anyone really give an argument fully adequate to the horror which is father-daughter incest (even with consent), or having sex with animals, or mutilating a corpse, or eating human flesh, or even just (just!) raping or murdering another human being? Would anybody's failure to give full rational justification for his or her revulsion at these practices make that revulsion ethically suspect? Not at all. On the contrary, we are suspicious of those who think that they can rationalize away our horror, say, by trying to explain the enormity of incest with arguments only about the genetic risks of inbreeding.

Our repugnance at human cloning belongs in this category. We are repelled by the prospect of cloning human beings not because of the strangeness or novelty of the undertaking, but because we intuit and feel, immediately and without argument, the violation of things that we rightfully hold dear. Repugnance, here as elsewhere, revolts against the excesses of human willfulness, warning us not to transgress what is unspeakably profound. Indeed, in this age in which everything is held to be permissible so long as it is freely done, in which our given human nature no longer commands respect, in which our bodies are regarded as mere instruments of our autonomous rational wills, repugnance may be the only voice left that speaks up to defend the central core of our humanity. Shallow are the souls that have forgotten how to shudder.

The goods protected by repugnance are generally overlooked by our customary ways of approaching all new biomedical technologies. The way we evaluate cloning ethically will in fact be shaped by how we characterize it descriptively, by the context into which we place it, and by the perspective from which we view it. The first task for ethics is proper description. And here is where our failure begins.

Typically, cloning is discussed in one or more of three familiar contexts, which one might call the technological, the liberal, and the meliorist. Under the first, cloning will be seen as an extension of existing techniques for assisting reproduction and determining the genetic makeup of children. Like them,

cloning is to be regarded as a neutral technique, with no inherent meaning or goodness, but subject to multiple uses, some good, some bad. The morality of cloning thus depends absolutely on the goodness or badness of the motives and intentions of the cloners: as one bioethicist defender of cloning puts it, "The ethics . . . must be judged [only] by the way . . . the parents nurture and rear their resulting child and whether they bestow the same love and affection on a child brought into existence by a technique of assisted reproduction as they would on a child born in the usual way."¹⁹

The liberal (or libertarian or liberationist) perspective sets cloning in the context of rights, freedoms, and personal empowerment. Cloning is just a new option for exercising an individual's right to reproduce or to have the kind of child that he or she wants. Alternatively, cloning enhances our liberation (especially women's liberation) from the confines of nature, the vagaries of chance, or the necessity for sexual mating. Indeed, it liberates women from the need for men altogether, for the process requires only eggs, nuclei, and (for the time being) uteri—plus, of course, a healthy dose of our (allegedly "masculine") manipulative science that likes to do all these things to Mother Nature and nature's mothers. For those who hold this outlook, the only moral restraints on cloning are adequately informed consent and the avoidance of bodily harm. If no one is cloned without her consent, and if the clonant is not physically damaged, then the liberal conditions for licit, hence moral, conduct are met. Worries that go beyond violating the will or maiming the body are dismissed as "symbolic"—which is to say, "unreal."

The meliorist perspective embraces valetudinarians and also eugenicists. The latter were formerly more vocal in these discussions, but they are now generally happy to see their goals advanced under the less threatening banners of freedom and technological growth. These people see in cloning a new prospect for improving human beings—minimally, by ensuring the perpetuation of healthy individuals by avoiding the risks of genetic disease inherent in the lottery of sex, and maximally, by producing "optimum babies," preserving outstanding genetic material, and (with the help of soon-to-come techniques for precise genetic engineering) enhancing inborn human capacities on many fronts. Here the morality of cloning as a means is justified solely by the excellence of the end, that is, by the outstanding traits or individuals cloned—beauty, or brawn, or brains.

These three approaches, all quintessentially American and all perfectly fine in their places, are sorely wanting as approaches to human procreation. It is, to say the least, grossly distorting to view the wondrous mysteries of birth,

19. See Macklin, *BIOLAW*, *supra* note 16, at S132.

renewal, and individuality, and the deep meaning of parent-child relations, largely through the lens of our reductive science and its potent technologies. Similarly, considering reproduction (and the intimate relations of family life!) primarily under the political-legal, adversarial, and individualistic notion of rights can only undermine the private yet fundamentally social, cooperative, and duty-laden character of child-bearing, child-rearing, and their bond to the covenant of marriage. Seeking to escape entirely from nature (in order to satisfy a natural desire or natural right to reproduce!) is self-contradictory in theory and self-alienating in practice. For we are erotic beings only because we are embodied beings, and not merely intellects and wills unfortunately imprisoned in our bodies. And, though health and fitness are clearly great goods, there is something deeply disquieting in looking on our prospective children as artful products perfectible by genetic engineering, increasingly held to our willfully imposed designs, specifications, and margins of tolerable error.

The technical, liberal, and meliorist approaches all ignore the deeper anthropological, social, and, indeed, ontological meanings of bringing forth new life. To this more fitting and profound point of view, cloning shows itself to be a major alteration, indeed, a major violation, of our given nature as embodied, gendered, and engendering beings—and of the social relations built on this natural ground. Once this perspective is recognized, the ethical judgment on cloning can no longer be reduced to a matter of motives and intentions, rights and freedoms, benefits and harms, or even means and ends. It must be regarded primarily as a matter of meaning: Is cloning a fulfillment of human begetting and belonging? Or is cloning rather, as I contend, their pollution and perversion? To pollution and perversion, the fitting response can only be horror and revulsion; and conversely, generalized horror and revulsion are *prima facie* evidence of foulness and violation. The burden of moral argument must fall entirely on those who want to declare the widespread repugnances of humankind to be mere timidity or superstition.

Yet repugnance need not stand naked before the bar of reason. The wisdom of our horror at human cloning can be partially articulated, even if this is finally one of those instances about which the heart has its reasons that reason cannot entirely know.

V. THE PROFUNDITY OF SEX

To see cloning in its proper context, we must begin not, as I did before, with laboratory technique, but with the anthropology—natural and social—of sexual reproduction. Sexual reproduction—by which I mean the generation of new life from (exactly) two complementary elements, one female, one male, (usually) through coitus—is established (if that is the right term) not by human decision, culture, or tradition, but by nature; it is the natural way of all

mammalian reproduction. By nature, each child has two complementary biological progenitors. Each child thus stems from and unites exactly two lineages. In natural generation, moreover, the precise genetic constitution of the resulting offspring is determined by a combination of nature and chance, not by human design: each human child shares the common natural human species genotype, each child is genetically (equally) kin to each (both) parent(s), yet each child is also genetically unique.

These biological truths about our origins foretell deep truths about our identity and about our human condition altogether. Every one of us is at once equally human, equally enmeshed in a particular familial nexus of origin, and equally individuated in our trajectory from birth to death—and, if all goes well, equally capable (despite our mortality) of participating, with a complementary other, in the very same renewal of such human possibility through procreation. Though less momentous than our common humanity, our genetic individuality is not humanly trivial. It shows itself forth in our distinctive appearance through which we are everywhere recognized; it is revealed in our “signature” marks of fingerprints and our self-recognizing immune system; it symbolizes and foreshadows exactly the unique, never-to-be repeated character of each human life.

Human societies virtually everywhere have structured child-rearing responsibilities and systems of identity and relationship on the bases of these deep natural facts of begetting. The mysterious yet ubiquitous natural “love of one’s own” is everywhere culturally exploited, to make sure that children are not just produced but well cared for and to create for everyone clear ties of meaning, belonging, and obligation. But it is wrong to treat such naturally rooted social practices as mere cultural constructs (like left- or right-driving, or like burying or cremating the dead) that we can alter with little human cost. What would kinship be without its clear natural grounding? And what would identity be without kinship? We must resist those who have begun to refer to sexual reproduction as the “traditional method of reproduction,”²⁰ who would have us regard as merely traditional, and by implication arbitrary, what is in truth not only natural but most certainly profound.

Asexual reproduction, which produces “single-parent” offspring, is a radical departure from the natural human way, confounding all normal understandings of father, mother, sibling, grandparent, etc., and all moral relations tied thereto. It becomes even more of a radical departure when the resulting offspring is a clone derived not from an embryo, but from a mature adult to whom it would be an identical twin; and when the process occurs not

20. Robertson, *BIOLAW*, *supra* note 16, at S134.

by natural accident (as in natural twinning), but by deliberate human design and manipulation; and when the child's (or children's) genetic constitution is pre-selected by the parent(s) (or scientists). Accordingly, as we will see, cloning is vulnerable to three kinds of concerns and objections, related to these three points: cloning threatens confusion of identity and individuality, even in small-scale cloning; cloning represents a giant step (though not the first one) toward transforming procreation into manufacture, that is, toward the increasing depersonalization of the process of generation and, increasingly, toward the "production" of human children as artifacts, products of human will and design (what others have called the problem of "commodification" of new life); and cloning—like other forms of eugenic engineering of the next generation—represents a form of despotism of the cloners over the cloned, and thus (even in benevolent cases) represents a blatant violation of the inner meaning of parent-child relations, of what it means to have a child, of what it means to say "yes" to our own demise and "replacement."

Before turning to these specific ethical objections, let me test my claim of the profundity of the natural way by taking up a challenge recently posed by a friend. What if the given natural human way of reproduction were asexual, and we now had to deal with a new technological innovation—artificially induced sexual dimorphism and the fusing of complementary gametes—whose inventors argued that sexual reproduction promised all sorts of advantages, including hybrid vigor and the creation of greatly increased individuality? Would one then be forced to defend natural asexuality because it was natural? Could one claim that it carried deep human meaning?

The response to this challenge broaches the ontological meaning of sexual reproduction. For it is impossible, I submit, for there to have been human life—or even higher forms of animal life—in the absence of sexuality and sexual reproduction. We find asexual reproduction only in the lowest forms of life: bacteria, algae, fungi, some lower invertebrates. Sexuality brings with it a new and enriched relationship to the world. Only sexual animals can seek and find complementary others with whom to pursue a goal that transcends their own existence. For a sexual being, the world is no longer an indifferent and largely homogeneous *otherness*, in part edible, in part dangerous. It also contains some very special and related and complementary beings, of the same kind but of opposite sex, toward whom one reaches out with special interest and intensity. In higher birds and mammals, the outward gaze keeps a lookout not only for food and predators, but also for prospective mates; the beholding of the many splendored world is suffused with desire for union, the animal antecedent of human eros and the germ of sociality. Not by accident is the human animal both the sexiest animal—whose females do not go into heat but are receptive throughout the estrous cycle and whose males must therefore have greater sexual

appetite and energy in order to reproduce successfully—and also the most aspiring, the most social, the most open, and the most intelligent animal.

The soul-elevating power of sexuality is, at bottom, rooted in its strange connection to mortality, which it simultaneously accepts and tries to overcome. Asexual reproduction may be seen as a continuation of the activity of self-preservation. When one organism buds or divides to become two, the original being is (doubly) preserved, and nothing dies. Sexuality, by contrast, means perishability and serves replacement; the two that come together to generate one soon will die. Sexual desire, in human beings as in animals, thus serves an end that is partly hidden from, and finally at odds with, the self-serving individual. Whether we know it or not, when we are sexually active, we are voting with our genitalia for our own demise. The salmon swimming upstream to spawn and die tell the universal story: sex is bound up with death, to which it holds a partial answer in procreation.

The salmon and the other animals evince this truth blindly. Only the human being can understand what it means. As we learn so powerfully from the story of the Garden of Eden, our humanization is coincident with sexual self-consciousness, with the recognition of our sexual nakedness and all that it implies: shame at our needy incompleteness, unruly self-division, and finitude; awe before the eternal; hope in the self-transcending possibilities of children and a relationship to the divine. In the sexually self-conscious animal, sexual desire can become eros, lust can become love. Sexual desire humanly regarded is thus sublimated into erotic longing for wholeness, completion, and immortality, which drives us knowingly into the embrace and its generative fruit—as well as into all the higher human possibilities of deed, speech, and song.

Through children, a good common to both husband and wife, male and female achieve some genuine unification (beyond the mere sexual “union,” which fails to do so). The two become one through sharing generous (not needy) love for this third being as good. Flesh of their flesh, the child is the parents’ own commingled being externalized and given a separate and persisting existence. Unification is enhanced also by their commingled work of rearing. Providing an opening to the future beyond the grave, carrying not only our seed but also our names, our ways and our hopes that they will surpass us in goodness and happiness, children are a testament to the possibility of transcendence. Gender duality and sexual desire, which first draws our love upward and outside of ourselves, finally provide for the partial overcoming of the confinement and limitation of perishable embodiment altogether.

Human procreation, in sum, is thus not simply an activity of our rational wills. It is a more complete activity precisely because it engages us bodily, erotically, and spiritually, as well as rationally. There is wisdom in the mystery

of nature that has joined the pleasure of sex, the inarticulate longing for union, the communication of the loving embrace, and the deep-seated and only partly articulate desire for children in the very activity by which we continue the chain of human existence and participate in the renewal of human possibility. Whether or not we know it, the severing of procreation from sex, love, and intimacy is inherently dehumanizing, no matter how good the product.

We are now ready for the more specific objections to cloning.

VI. THE PERVERSITIES OF CLONING

First, an important if formal objection: any attempt to clone a human being would constitute an unethical experiment upon the resulting child-to-be. As the animal experiments (frog and sheep) indicate, there are grave risks of mishaps and deformities. Moreover, because of what cloning means, one cannot presume a future cloned child's consent to be a clone, even a healthy one. Thus, ethically speaking, we cannot even get to know whether human cloning is feasible.

I understand, of course, the philosophical difficulty of trying to compare a life with defects against nonexistence. Several bioethicists, proud of their philosophical cleverness, use this conundrum to embarrass claims that one can injure a child in its conception, precisely because it is only thanks to that complained-of conception that the child is alive to complain. But common sense tells us that we have no reason to fear such philosophisms. For we surely know that people can harm and even maim children in the very act of conceiving them, say, by paternal transmission of the AIDS virus, maternal transmission of heroin dependence, or, arguably, even by bringing them into being as bastards or with no capacity or willingness to look after them properly. And we believe that to do this intentionally, or even negligently, is inexcusable and clearly unethical.

The objection about the impossibility of presuming consent may even go beyond the obvious and sufficient point that a clonant, were he subsequently to be asked, could rightly resent having been made a clone. At issue are not just benefits and harms, but doubts about the very independence needed to give proper (even retroactive) consent, that is, not just the capacity to choose but the disposition and ability to choose freely and well. It is not at all clear to what extent a clone will truly be a moral agent. For, as we shall see, in the very act of cloning and of rearing him as a clone, his makers subvert the cloned child's independence, beginning with that aspect that comes from knowing that one was an unbidden surprise, a gift, to the world rather than the designed result of someone's artful project.

Cloning creates serious issues of identity and individuality. The cloned person may experience concerns about his distinctive identity not only because he will be in genotype and appearance identical to another human being, but, in this case, because he may also be twin to the person who is his "father" or "mother"—if one can still call them that. What would be the psychic burdens of being the "child" or "parent" of your twin? The cloned individual, moreover, will be saddled with a genotype that has already lived. He will not be fully a surprise to the world. People are likely always to compare his performances in life with that of his alter ego. True, his nurture and circumstance in life will be different; genotype is not exactly destiny. Still, one must also expect parental and other efforts to shape this new life after the original—or at least to view the child with the original version always firmly in mind. Why else did they clone from the star basketball player, mathematician, and beauty queen—or even dear old Dad—in the first place?

Since the birth of Dolly, there has been a fair amount of doublespeak on this matter of genetic identity. Experts have rushed in to reassure the public that the clone would in no way be the same person, or have any confusions about his or her identity: as previously noted, they are pleased to point out that the clone of Mel Gibson would not be Mel Gibson. Fair enough. But one is shortchanging the truth by emphasizing the additional importance of the intrauterine environment, rearing, and social setting: genotype obviously matters plenty. That, after all, is the only reason to clone, whether human beings or sheep. The odds that clones of Wilt Chamberlain will play in the NBA are, I submit, infinitely greater than they are for clones of Robert Reich.

Curiously, this conclusion is supported, inadvertently, by the one ethical sticking point insisted on by friends of cloning: no cloning without the donor's consent. Though an orthodox liberal objection, it is in fact quite puzzling when it comes from people (such as Ruth Macklin²¹) who also insist that genotype is not identity or individuality, and who deny that a child could reasonably complain about being made a genetic copy. If the clone of Mel Gibson would not be Mel Gibson, why should Mel Gibson have grounds to object that someone had been made his clone? We already allow researchers to use blood and tissue samples for research purposes of no benefit to their sources: my falling hair, my expectorations, my urine, and even my biopsied tissues are "not me" and not mine. Courts have held that the profit gained from uses to which scientists put my discarded tissues do not legally belong to me.²² Why, then, no cloning without consent— not including, I assume, no cloning from the body of someone who just died? What harm is done the donor, if genotype is "not

21. See Macklin, *BIOLAW*, *supra* note 16, at S131. "One incontestable ethical requirement is that no adult person should be cloned without his or her consent." *Id.*

22. See, e.g., *Moore v. Regents of the University of California*, 793 P.2d 479 (Cal. 1990).

me"? Truth to tell, the only powerful justification for objecting is that genotype really does have something to do with identity, and everybody knows it. If not, on what basis could Michael Jordan object that someone cloned "him," say, from cells taken from a "lost," scraped-off piece of his skin? The insistence on donor consent unwittingly reveals the problem of identity in all cloning.

Genetic distinctiveness not only symbolizes the uniqueness of each human life and the independence of its parents that each human child rightfully attains; it can also be an important support for living a worthy and dignified life. Such arguments apply with great force to any large-scale replication of human individuals. But they are sufficient, in my view, to rebut even the first attempts to clone a human being. One must never forget that these are human beings upon whom our eugenic or merely playful fantasies are to be enacted.

Troubled psychic identity (distinctiveness), based on all-too-evident genetic identity (sameness), will be made much worse by the utter confusion of social identity and kinship ties. For, as already noted, cloning radically confounds lineage and social relations, for "offspring" as for "parents." As bioethicist James Nelson has pointed out, a female child cloned from her "mother" might develop a desire for a relationship to her "father," and might understandably seek out the father of her "mother," who is after all also her biological twin sister.²³ Would "grandpa," who thought his paternal duties concluded, be pleased to discover that the clonant looked to him for paternal attention and support?

Social identity and social ties of relationship and responsibility are widely connected to, and supported by, biological kinship. Social taboos on incest (and adultery) everywhere serve to keep clear who is related to whom (and especially which child belongs to which parents), as well as to avoid confounding the social identity of parent-and-child (or brother-and-sister) with the social identity of lovers, spouses, and co-parents. True, social identity is altered by adoption (but as a matter of the best interest of already living children: we do not deliberately produce children for adoption). True, artificial insemination and IVF with donor sperm, or whole embryo donation, are in some way forms of "prenatal adoption"—a not altogether unproblematic practice. Even here, though, there is in each case (as in all sexual reproduction) a known male source of sperm and a known single female source of egg—a genetic father and a genetic

23. See James Lindemann Nelson, *Cloning, Families, and the Reproduction of Persons*, BIOLAW, June 1997, at S144; James Lindemann Nelson, *Cloning, Families, and the Reproduction of Persons*, 32 VAL. U. L. REV. 715 (1998); James Lindemann Nelson, *Cloning, Families, and the Reproduction of Persons* (visited Apr. 18, 1998) <<http://www.all.org/nbac/970313b.htm>> (testimony presented before the National Bioethics Advisory Commission, Washington, D.C., Mar. 14, 1997).

mother—should anyone care to know (as adopted children often do) who is genetically related to whom.

In the case of cloning, however, there is but one “parent.” The usually sad situation of the “single-parent child” is here deliberately planned, and with a vengeance. In the case of self-cloning, the “offspring” is, in addition, one’s twin; and so the dreaded result of incest—to be parent to one’s sibling—is here brought about deliberately, albeit without any act of coitus. Moreover, all other relationships will be confounded. What will father, grandfather, aunt, cousin, sister mean? Who will bear what ties and what burdens? What sort of social identity will someone have with one whole side—“father’s” or “mother’s”—necessarily excluded? It is no answer to say that our society, with its high incidence of divorce, remarriage, adoption, extramarital childbearing, and the rest, already confounds lineage and confuses kinship and responsibility for children (and everyone else), unless one also wants to argue that this is, for children, a preferable state of affairs.

Human cloning would also represent a giant step toward turning begetting into making, procreation into manufacture (literally, something “handmade”), a process already begun with IVF and genetic testing of embryos. With cloning, not only is the process in hand, but the total genetic blueprint of the cloned individual is selected and determined by the human artisans. To be sure, subsequent development will take place according to natural processes; and the resulting children will still be recognizably human. But we here would be taking a major step into making man himself simply another one of the man-made things. Human nature becomes merely the last part of nature to succumb to the technological project, which turns all of nature into raw material at human disposal, to be homogenized by our rationalized technique according to the subjective prejudices of the day.

How does begetting differ from making? In natural procreation, human beings come together, complementarily male and female, to give existence to another being who is formed, exactly as we were, *by what we are*: living, hence perishable, hence aspiringly erotic, human beings. In clonal reproduction, by contrast, and in the more advanced forms of manufacture to which it leads, we give existence to a being not by what we are but by what we intend and design. As with any product of our making, no matter how excellent, the artificer stands above it, not as an equal but as a superior, transcending it by his will and creative prowess. Scientists who clone animals make it perfectly clear that they are engaged in instrumental making; the animals are, from the start, designed as means to serve rational human purposes. In human cloning, scientists and prospective “parents” would be adopting the same technocratic mentality to human children: human children would be their artifacts.

Such an arrangement is profoundly dehumanizing, no matter how good the product. Mass-scale cloning of the same individual makes the point vividly, but the violation of human equality, freedom, and dignity are present even in a single planned clone. And procreation dehumanized into manufacture is further degraded by commodification, a virtually inescapable result of allowing baby-making to proceed under the banner of commerce. Genetic and reproductive biotechnology companies are already growth industries, but they will go into commercial orbit once the Human Genome Project nears completion. Supply will create enormous demand. Even before the capacity for human cloning arrives, established companies will have invested in the harvesting of eggs from ovaries obtained at autopsy or through ovarian surgery, practiced embryonic genetic alteration, and initiated the stockpiling of prospective donor tissues. Through the rental of surrogate-womb services, and through the buying and selling of tissues and embryos, priced according to the merit of the donor, the commodification of nascent human life will be unstoppable.

Finally, and perhaps most important, the practice of human cloning by nuclear transfer—like other anticipated forms of genetic engineering of the next generation—would enshrine and aggravate a profound and mischievous misunderstanding of the meaning of having children and of the parent-child relationship. When a couple now chooses to procreate, the partners are saying yes to the emergence of new life in its novelty, saying yes not only to having a child but also, tacitly, to having whatever child this child turns out to be. In accepting our finitude and opening ourselves to our replacement, we are tacitly confessing the limits of our control. In this ubiquitous way of nature, embracing the future by procreating means precisely that we are relinquishing our grip, in the very activity of taking up our own share in what we hope will be the immortality of human life and the human species. This means that our children are not *our* children: they are not our property, not our possessions. Neither are they supposed to live our lives for us, or anyone else's lives but their own. To be sure, we seek to guide them on their way, imparting to them not just life but nurturing, love, and a way of life; to be sure, they bear our hopes that they will live fine and flourishing lives, enabling us in small measure to transcend our own limitations. Still, their genetic distinctiveness and independence are the natural foreshadowing of the deep truth that they have their own and never-before-enacted life to live. They are sprung from a past, but they take an uncharted course into the future.

Much harm is already done by parents who try to live vicariously through their children. Children are sometimes compelled to fulfill the broken dreams of unhappy parents; John Doe, Jr. or the III is under the burden of having to live up to his forebear's name. Still, if most parents have hopes for their children, cloning parents will have expectations. In cloning, such overbearing

parents take at the start a decisive step which contradicts the entire meaning of the open and forward-looking nature of parent-child relations. The child is given a genotype that has already lived, with full expectation that this blueprint of a past life ought to be controlling of the life that is to come. Cloning is inherently despotic, for it seeks to make one's children (or someone else's children) after one's own image (or an image of one's choosing) and their future according to one's will. In some cases, the despotism may be mild and benevolent. In other cases, it will be mischievous and downright tyrannical. But despotism—the control of another through one's will—it inevitably will be.

VII. MEETING SOME OBJECTIONS

The defenders of cloning, of course, are not wittingly friends of despotism. Indeed, they regard themselves mainly as friends of freedom: the freedom of individuals to reproduce, and the freedom of scientists and inventors to discover and devise and to foster "progress" in genetic knowledge and technique. They want large-scale cloning only for animals, but they wish to preserve cloning as a human option for exercising our "right to reproduce"—our right to have children, and children with "desirable genes." As law professor John Robertson points out, under our "right to reproduce," we already practice early forms of unnatural, artificial, and extra-marital reproduction, and we already practice early forms of eugenic choice.²⁴ For this reason, he argues, cloning is no big deal.

We have here a perfect example of the logic of the slippery slope, and the slippery way in which it already works in this area. Only a few years ago, slippery slope arguments were used to oppose artificial insemination and IVF using unrelated sperm donors. Principles used to justify these practices, it was said, will be used to justify more artificial and more eugenic practices, including cloning. Not so, the defenders retorted, because we can make the necessary distinctions. And now, without even a gesture at making the necessary distinctions, the continuity of practice is held by itself to be justificatory.

The principle of reproductive freedom as currently enunciated by the proponents of cloning logically embraces the ethical acceptability of sliding down the entire rest of the slope—to producing children ectogenetically from sperm to term (should it become feasible) and to producing children whose entire genetic makeup will be the product of parental eugenic planning and choice. If reproductive freedom means the right to have a child of one's own choosing, by whatever means, it knows and accepts no limits.

24. Robertson, *BIOLAW*, *supra* note 16, at S134-37.

But, far from being legitimated by a "right to reproduce," the emergence of techniques of assisted reproduction and genetic engineering should compel us to reconsider the meaning and limits of such a putative right. In truth, a "right to reproduce" has always been a peculiar and problematic notion. Rights generally belong to individuals, but this is a right which (before cloning) no one can exercise alone. Does the right then inhere only in couples? Only in married couples? Is it a (woman's) right to carry or deliver or a right (of one or more parents) to nurture and rear? Is it a right to have your own biological child? Is it a right only to attempt reproduction, or a right also to succeed? Is it a right to acquire the baby of one's choice?

The assertion of a negative "right to reproduce" certainly makes sense when it claims protection against state interference with procreative liberty, say, through a program of compulsory sterilization. But surely it cannot be the basis of a tort claim against nature, to be made good by technology, should free efforts at natural procreation fail. Some insist that the right to reproduce embraces also the right against state interference with the free use of all technological means to obtain a child. Yet such a position cannot be sustained: for reasons having to do with the means employed, any community may rightfully prohibit surrogate pregnancy, or polygamy, or the sale of babies to infertile couples, without violating anyone's basic human "right to reproduce." When the exercise of a previously innocuous freedom now involves or impinges on troublesome practices that the original freedom never was intended to reach, the general presumption of liberty needs to be reconsidered.

We do indeed already practice negative eugenic selection, through genetic screening and prenatal diagnosis. Yet our practices are governed by a norm of health. We seek to prevent the birth of children who suffer from known (serious) genetic diseases. When and if gene therapy becomes possible, such diseases could then be treated, *in utero* or even before implantation—I have no ethical objection in principle to such a practice (though I have some practical worries), precisely because it serves the medical goal of healing existing individuals. But therapy, to be therapy, implies not only an existing "patient," it also implies a norm of health. In this respect, even germline gene "therapy," though practiced not on a human being but on egg and sperm, is less radical than cloning, which is in no way therapeutic. But once one blurs the distinction between health promotion and genetic enhancement, between so-called negative and positive eugenics, one opens the door to all future eugenic designs. "[T]o make sure that a child will be healthy and have good chances in life": this is Robertson's principle,²⁵ and owing to its latter clause it is an utterly elastic principle, with no boundaries. Being over eight feet tall will likely produce

25. *Id.* at S137.

some very good chances in life, and so will having the looks of Marilyn Monroe, and so will a genius-level intelligence.

Proponents want us to believe that there are legitimate uses of cloning that can be distinguished from illegitimate uses, but by their own principles no such limits can be found. (Nor could any such limits be enforced in practice.) Reproductive freedom, as they understand it, is governed solely by the subjective wishes of the parents-to-be (plus the avoidance of bodily harm to the child). The sentimentally appealing case of the childless married couple is, on these grounds, indistinguishable from the case of an individual (married or not) who would like to clone someone famous or talented, living or dead. Further, the principle here endorsed justifies not only cloning but, indeed, all future artificial attempts to create (manufacture) "perfect" babies.

A concrete example will show how, in practice no less than in principle, the so-called innocent case will merge with, or even turn into, the more troubling ones. In practice, the eager parents-to-be will necessarily be subject to the tyranny of expertise. Consider an infertile married couple, she lacking eggs or he lacking sperm, that wants a child of their (genetic) own, and propose to clone either husband or wife. The scientist-physician (who is also co-owner of the cloning company) points out the likely difficulties—a cloned child is not really their (genetic) child, but the child of only *one* of them; this imbalance may produce strains on the marriage; the child might suffer identity confusion; there is a risk of perpetuating the cause of sterility; and so on—and he also points out the advantages of choosing a donor nucleus. Far better than a child of their own would be a child of their own choosing. Touting his own expertise in selecting healthy and talented donors, the doctor presents the couple with his latest catalog containing the pictures, the health records, and the accomplishments of his stable of cloning donors, samples of whose tissues are in his deep freeze. Why not, dearly beloved, a more perfect baby?

The "perfect baby," of course, is the project not of the infertility doctors, but of the eugenic scientists and their supporters. For them, the paramount right is not the so-called right to reproduce, but what biologist Bentley Glass called, a quarter of a century ago, "the right of every child to be born with a sound physical and mental constitution, based on a sound genotype . . . [that is,] the inalienable right to a sound heritage."²⁶ But to secure this right, and to achieve

26. Bentley Glass, *Science: Endless Horizons or Golden Age?* 171 SCI. 23, 28 (1971). In this presidential address to the American Association for the Advancement of Science, Glass continues: "No parents will in that future time have a right to burden society with a malformed or mentally incompetent child." *Id.*

the requisite quality control over new human life, human conception and gestation will need to be brought fully into the bright light of the laboratory, beneath which it can be fertilized, nourished, pruned, weeded, watched, inspected, prodded, pinched, cajoled, injected, tested, rated, graded, approved, stamped, wrapped, sealed, and delivered. There is no other way to produce the perfect baby.

Yet we are urged by proponents of cloning to forget about the science fiction scenarios of laboratory manufacture and multiple-copied clones, and to focus only on the homely cases of infertile couples exercising their reproductive rights. But why, if the single cases are so innocent, should multiplying their performance be so off-putting? (Similarly, why do others object to people making money off this practice, if the practice itself is perfectly acceptable?) When we follow the sound ethical principle of universalizing our choice—"would it be right if everyone cloned a Wilt Chamberlain (with his consent, of course)? Would it be right if everyone decided to practice asexual reproduction?"—we discover what is wrong with these seemingly innocent cases. The so-called science fiction cases make vivid the meaning of what looks to us, mistakenly, to be benign.

Though I recognize certain continuities between cloning and, say, IVF, I believe that cloning differs in essential and important ways. But those who disagree should be reminded that the "continuity" argument cuts both ways. Sometimes we establish bad precedents and discover that they were bad only when we follow their inexorable logic to places we never meant to go. Can the defenders of cloning show us today how, on their principles, we will be able to see producing babies ("perfect babies") entirely in the laboratory or exercising full control over their genotypes (including so-called enhancement) as ethically different, in any essential way, from present forms of assisted reproduction? Or are they willing to admit, despite their attachment to the principle of continuity, that the complete obliteration of "mother" or "father," the complete depersonalization of procreation, the complete manufacture of human beings, and the complete genetic control of one generation over the next would be ethically problematic and essentially different from current forms of assisted reproduction? If so, where and how will they draw the line, and why? I draw it at cloning, for all the reasons given.

VIII. BAN THE CLONING OF HUMANS

What, then, should we do? We should declare that human cloning is unethical in itself and dangerous in its likely consequences. In so doing, we shall have the backing of the overwhelming majority of our fellow Americans, and of the human race, and (I believe) of most practicing scientists. Next, we should do all that we can to prevent the cloning of human beings. We should

do this by means of an international legal ban if possible, and by a unilateral national ban, at a minimum. Scientists may secretly undertake to violate such a law, but they will be deterred by not being able to stand up proudly to claim the credit for their technological bravado and success. Such a ban on clonal baby-making, moreover, will not harm the progress of basic genetic science and technology. On the contrary, it will reassure the public that scientists are happy to proceed without violating the deep ethical norms and intuitions of the human community.

This still leaves the vexed question about laboratory research using early embryonic human clones, specially created only for such research purposes, with no intention to implant them into a uterus. There is no question that such research holds great promise for gaining fundamental knowledge about normal (and abnormal) differentiation, and for developing tissue lines for transplantation that might be used, say, in treating leukemia or in repairing brain or spinal cord injuries—to mention just a few of the conceivable benefits. Still, unrestricted clonal embryo research will surely make the production of living human clones much more likely. Once the genies put the cloned embryos into the bottles, who can strictly control where they go (especially in the absence of legal prohibitions against implanting them to produce a child)?

I appreciate the potentially great gains in scientific knowledge and medical treatment available from embryo research, especially with cloned embryos. At the same time, I have serious reservations about creating human embryos for the sole purpose of experimentation. There is something deeply repugnant and fundamentally transgressive about such a utilitarian treatment of prospective human life. This total, shameless exploitation is worse, in my opinion, than the “mere” destruction of nascent life. But I see no added objections, as a matter of principle, to creating and using *cloned* early embryos for research purposes, beyond the objections that I might raise to doing so with embryos produced sexually.

And yet, as a matter of policy and prudence, any opponent of the manufacture of cloned humans must, I think, in the end oppose also the creating of cloned human embryos. Frozen embryonic clones (belonging to whom?) can be shuttled around without detection. Commercial ventures in human cloning will be developed without adequate oversight. In order to build a fence around the law, prudence dictates that one oppose—for this reason alone—all production of cloned human embryos, even for research purposes. We should allow all cloning research on animals to go forward, but the only safe trench that we can dig across the slippery slope, I suspect, is to insist on the inviolable distinction between animal and human cloning.

Some readers, and certainly most scientists, will not accept such prudent restraints, because they desire the benefits of research. They will prefer, even in fear and trembling, to allow human embryo cloning research to go forward.

Very well. Let us test them. If the scientists want to be taken seriously on ethical grounds, they must at the very least agree that embryonic research may proceed if and only if it is preceded by an absolute and effective ban on all attempts to implant into a uterus a cloned human embryo (cloned from an adult) to produce a living child. Absolutely no permission for the former without the latter.

The NBAC's recommendations regarding these matters were a step in the right direction, but a step made limpingly and, finally, without adequate support. To its credit, the Commission has indeed called for federal legislation to prevent anyone from attempting to create a child through cloning; this was, frankly, more than I expected. But the *moral basis* for the Commission's opposition to cloning is, sadly, much less than expected and needed, and the ban it urges is to be only temporary. Trying to clone a human being, says the Commission, is "morally unacceptable" "*at this time*" because the technique has not yet been perfected to the point of safe usage.²⁷ In other words, once it becomes readily feasible to clone a human being, with little risk of bodily harm to the resulting child, the Commission has offered not one agreed-upon reason to object. Indeed, anticipating such improvements in technique, the Commission insists that "it is critical" that any legislative ban on baby-making through cloning should "include a sunset clause to ensure that Congress will review the issue after a specified time period (three to five years) in order to decide whether the prohibition continues to be needed."²⁸ Although it identifies other ethical concerns (beyond the issue of safety), this blue-ribbon ethics commission takes no stand on any of them! It says only that these issues "require much more widespread and careful public deliberation *before this technology may be used*"²⁹—N.B. not to decide *whether* it should be used. Relativistically, it wants to insure only that such ethical and social issues be regularly reviewed "in light of public understandings at that time."³⁰ This is hardly the sort of principled opposition to cloning that could be made the basis of any lasting prohibition.

Almost as worrisome, the report is silent on the vexed question of creating cloned human embryos for use in research. Silence is, of course, not an endorsement, but neither is it opposition. Given the currently existing ban on the

27. NBAC REPORT, *supra* note 4, at iii, 82, 108 (emphasis added).

28. *Id.* at iv, 109.

29. *Id.* at iii (emphasis added).

30. *Id.* at iv, 109.

use of federal funds for any research that involves creating human embryos for experimentation, the Commission may have preferred to avoid needless controversy by addressing this issue. Besides, those commissioners (no doubt a big majority) who favor proceeding with cloned embryo research have in fact gained their goal precisely by silence. For both the moratorium on federal funding and the legislative ban called for by the Commission are confined *solely* to attempts to *create a child* through cloning. The Commission knows well how vigorously and rapidly embryo research is progressing in the private sector, and it surely understands that its silence on the subject—and Congress'—means that the creation of human embryonic clones will proceed, and is perhaps already proceeding, in private or commercial laboratories. Indeed, the report expects and tacitly welcomes such human embryo research: for by what other means will we arrive at the expected improvements in human cloning technology that would require the recommended periodic reconsideration of any legislative ban?

In the end, the report of the Commission turns out to be a moral and (despite its best efforts) a practical failure. Morally, this ethics commission has waffled on the main ethical question, by refusing to declare the production of human clones unethical (or ethical). Practically, the moratorium and ban on baby-making that the Commission calls for, while welcome as temporary restraints, have not been given the justification needed to provide a solid and lasting protection against the production of cloned human beings. To the contrary, the Commission's weak ethical stance may be said to undermine even its limited call for restraint. Do we really need a federal law solely to protect unborn babies from bodily harm?

Opponents of cloning need therefore to be vigilant. They should press for legislation to *permanently* prohibit baby-making through cloning, and they should take steps to make such a prohibition effective.

The proposal for such a legislative ban is without American precedent, at least in technological matters, though the British and others have banned the cloning of human beings, and we ourselves ban incest, polygamy, and other forms of "reproductive freedom." Needless to say, working out the details of such a ban, especially a global one, would be tricky, what with the need to develop appropriate sanctions for violators. Perhaps such a ban will prove ineffective; perhaps it will eventually be shown to have been a mistake. But it would at least place the burden of practical proof where it belongs: on the proponents of this horror, requiring them to show very clearly what great social or medical good can be had only by the cloning of human beings.

We Americans have lived by, and prospered under, a rosy optimism about scientific and technological progress. The technological imperative—if it can be done, it must be done—has probably served us well, though we should admit

that there is no accurate method for weighing benefits and harms. Even when, as in the cases of environmental pollution, urban decay, or the lingering deaths that are the unintended by-products of medical success, we recognize the unwelcome outcomes of technological advance, we remain confident in our ability to fix all the “bad” consequences—usually by means of still newer and better technologies. . How successful we can continue to be in such post hoc repairing is at least an open question. But there is very good reason for shifting the paradigm around, at least regarding those technological interventions into the human body and mind that will surely effect fundamental (and likely irreversible) changes in human nature, basic human relationships, and what it means to be a human being. Here, we surely should not be willing to risk everything in the naive hope that, should things go wrong, we can later set them right.

The President’s call for a moratorium on human cloning has given us an important opportunity. In a truly unprecedented way, we can strike a blow for the human control of the technological project, for wisdom, prudence, and human dignity. The prospect of human cloning, so repulsive to contemplate, is the occasion for deciding whether we shall be slaves of unregulated progress, and ultimately its artifacts, or whether we shall remain free human beings who guide our technique toward the enhancement of human dignity. If we are to seize the occasion, we must, as the late Paul Ramsey wrote,

raise the ethical questions with a serious and not a frivolous conscience. A man of frivolous conscience announces that there are ethical quandaries ahead that we must urgently consider before the future catches up with us. By this he often means that we need to devise a new ethics that will provide the rationalization for doing in the future what men are bound to do because of new actions and interventions science will have made possible. In contrast, a man of serious conscience means to say in raising urgent ethical questions that there may be some things that men should never do. The good things that men do can be made complete only by the things they refuse to do.³¹

31. RAMSEY, *supra* note 15, at 122-23 (footnote omitted).

