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CLONING, FAMILIES, AND THE REPRODUCTION OF PERSONS*

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I. INTRODUCTION

The reproduction of human persons may be biologically exhausting, but it is not exhaustively biological; socially mediated tasks of nurturing the young, and of forming and consolidating personal identity and interpersonal roles continue the process initiated in conception, gestation, and parturition. People have proven extremely resourceful in developing different practices and structures for discharging these social tasks and have understood what constitutes successful completion in different ways. But many strategies assign very important roles to small-scale intergenerational associations of people in which special forms of interpersonal acknowledgment and recognition go on. I refer, of course, to families.¹

People have also shown themselves to be ingenious in coming up with different approaches to the biological side of the reproduction of persons, the prospect of human cloning being perhaps the most conspicuous example of this ingenuity. This introduces the general question I want to consider here: if cloning were to be added to the array of options for carrying out the biological aspects of human reproduction, how might the remaining tasks involved in reproducing persons, as they are embedded in family structures familiar to many of us, be affected? In particular, I will explore ways in which those social tasks might be rendered harder to complete well, might become less certain of their ends, or might be more likely to be frustrated—that is, the possible negative implications that cloning human beings might have for families.

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** Ph.D., State University of New York at Buffalo, 1980; Professor of Philosophy, The University of Tennessee, Knoxville. I am indebted to Sara Ruddick and William Ruddick, and particularly to Hilde Lindemann Nelson for discussion of cloning and families. Ms. Nelson's New York University presentation was particularly useful to me in preparing the present draft. *See infra* note 13. This should not be taken as any suggestion that Ms. Nelson or either of the Ruddicks endorse my approach or conclusion. I am also grateful to the National Bioethics Advisory Commission for the invitation to discuss my views on this matter. Finally, I should like to thank my research assistant at The University of Tennessee, Ms. Carolyn Ellis.

1. For discussion, see STEVE MINTZ & SUSAN KELLOGG, *DOMESTIC REVOLUTIONS: A SOCIAL HISTORY OF AMERICAN FAMILY LIFE* (1988); WILLIAM J. GOODE, *THE FAMILY* (2d ed. 1982).

II. CLONING PERSONS: SOME MOTIVATIONS

I start by roughing out types of scenarios in which cloning seems an attractive reproductive option; this does not pretend to be a complete catalog but does include many of the motivations that have been most discussed recently. One general type of scenario I will call *exclusion*: a person might wish to have a child that lacked a specific kind of genetic link that, but for cloning, would be present. A woman who carried the gene that expresses Huntington disease, for example, might want to bear a child who is genetically related to her husband but not (except for mitochondria) to her. Screening fertilized ova prior to implantation and discarding those with the Huntington gene presents her with a possible alternative to cloning, but if she sees discarding preembryos as tantamount to abortion, it may be an option she cannot elect. Such a woman could still achieve her goal by having the nucleus of one of her husband's cells inserted into her enucleated egg and then bringing the resultant fetus to term. Or a lesbian couple might wish to have a child that was genetically related to one partner and gestationally to the other, but not genetically related to any male parent; a cell nucleus from one partner and an enucleated ovum from the other permits the partners, but no one else, to be the most proximate biological cause of their child's existence.

Another type of scenario I will call *replication*. Here, the motive is not so much a matter of a child's lineage as of its less relational properties. A couple might wish to reproduce via cloning in order to replace a deceased child as closely as possible. Or, in what we could call the "Ayala variation" on this theme, a couple might wish to have a child genetically identical to an older sibling who requires organ or tissue transplantation.²

A third possible scenario type I call *affirmation*. Here, the aim is to employ cloning to affirm a relationship in some special fashion. Imagine a woman mourning the death of a much beloved partner. No gametes from that partner are available, but viable somatic cells are, and she wishes to bear a child in her partner's image as a testimony to their love. Or perhaps she uses nuclear material from a child they have already had together, with the same motivation.

2. Mary and Abraham Ayala conceived their daughter Marissa solely because their 17-year-old daughter Anissa was dying of leukemia and needed bone marrow from someone histologically compatible. Whereas there was only a one in four chance that Marissa would be histocompatible with Anissa, the chances are 100% for a baby born of cloning. For an account of the Ayala case and further discussion, see HILDE LINDEMANN NELSON & JAMES LINDEMANN NELSON, *THE PATIENT IN THE FAMILY* 156-57 (1995).

A variation on this theme has been suggested by William Ruddick, who imagines a husband so smitten by his wife that he wants to have the experience of raising someone as much as possible like her when she was young.³

These scenarios are not, of course, mutually exclusive. Lesbian couples, for example, might be motivated as much or more by a desire to express their mutual love and commitment, than by the desire to exclude from their reproductive lives elements they find undesirable. At the same time, there are significant distinctions among the scenarios, a feature that complicates any moral discussion of human cloning *per se*. There is, however, a feature that runs through all of them: the marked importance they place on biological relationships. Getting a decent purchase on the moral implications of human cloning will, so I think, involve trying to better understand why such relationships are so significant to so many of us.

III. THE MEANINGS OF BIOLOGICAL CONNECTEDNESS

The significance of genetic near-indistinguishability is perhaps most straightforward in "Ayala"-type cases, in which a new child is desired—at least in large part—for the medical benefits her body offers to another family member. But in each scenario—the lesbian couple who thinks it important for both of them, and only them, to be involved in their child's coming into the world, the grieving couple who wishes to retain as strong as possible a link to their lost child, the widow who wishes to keep alive her connection to her husband—the exclusions, affirmations, and replications seem most powerful if they include an important biological dimension.

There is nothing out of the ordinary about this. Most people are not indifferent between the reproductive options of having children "of their bodies," so to speak, and adoption. The cause of this common preference is, no doubt, overdetermined: the sociobiologists have an explanation,⁴ and, on top of considerations they advance, it is for many people simply much easier to beget and bear than to adopt, and it may strike them too as a more reliable way of getting children who can be counted on not to present their parents with unpleasant surprises. But I cannot help but think that these considerations do not fully explain this preference; for example, having children of one's own body is not always easier than adoption—consider what some people go through by way of assisted reproduction—nor is it always all that reliable a way to steer clear of surprises, as experienced parental hands know.

3. Private conversation with William Ruddick, Professor of Philosophy, New York University (Mar. 1997).

4. For general accounts of sociobiology, see EDWARD O. WILSON, *SOCIOBIOLOGY: THE NEW SYNTHESIS* (1975); PETER SINGER, *THE EXPANDING CIRCLE: ETHICS AND SOCIOBIOLOGY* (1981).

I think that another important part of many people's interest in having "their own" children is a response to their sense of their boundedness in time, of their mortality.⁵ Bringing new children into the world can be both a powerful expression of interest in the future and a way of connecting ourselves to that future. This is clearly not the only reason why most people prefer to have children of their own bodies—if it were, cloning would be a remarkably attractive strategy. Nor does it fully explain why biological connections to those who will survive us seem so compelling a part of this picture. Why would not enduring social achievements serve as well? The hypothesis I propose here is that our biological children strike most of us as the fullest and most faithful representatives of us as particular, embodied persons.

This is of course a speculation in a basically empirical matter, but it is not essential to the points I am trying to bring out that I be correct about it. What is important is that we accept that biological considerations are very significant to many people. There need be nothing confused or whimsical about this. The concerns I will explore here about cloning and families stem from the following points. First, biological connectedness may matter to children, not just to adults. Second, it is possible to assign too much significance to biological connectedness.

Biological connections matter to many children as much as they do to many parents. Consider those children raised by loving and competent adoptive parents, who yet retain an interest in knowing who their genetic parents are and in seeking out some kind of relationship with them. Some children whose conception was effected through artificial insemination by a donor (AID) have expressed similar interests, reporting that the lack of knowledge about and relationship with their progenitors is very painful.⁶

Both adoption and AID traditionally have been arranged in ways that slight children's interest in knowing their biological parents. But this is at least somewhat curious, surely, in a society willing to go to such lengths to bring about biological connection between adults and the children they raise. Why

5. See James Lindemann Nelson, *Genetic Narratives: Biology, Stories and the Definition of Family*, 2 HEALTH MATRIX 71, 81 (1992).

6. See generally DAVID DINGWELL, NEW REPRODUCTIVE AND GENETIC TECHNOLOGIES: SETTING BOUNDARIES, ENHANCING HEALTH (1996) (claiming that experience has shown children of both donor insemination and adoption to suffer negative effects due to anonymity and secrecy about their genetic origins); Jeffrey M. Shaman, *Legal Aspects of Artificial Insemination*, 18 J. FAM. L. 331, 338 (1980) (claiming that children conceived through donor insemination are liable to emotional suffering if donors' identities are withheld). See also Patricia P. Mahlstedt & Dorothy A. Greenfield, *Assisted Reproductive Technology with Donor Gametes: The Need for Patient Preparation*, 52 FERTILITY AND STERILITY 908 (1989); Erica Haimes, *Gamete Donation and Anonymity*, 66 BULL. MED. ETHICS 25 (1991).

should we so privilege adult interests and so dismiss the interests of children? Why, to put the question in terms of my speculation about the matter, regard a biological connection to the future as a vital part of the identity of adults, but not see biological connectedness to the past as an equally vital part of the identity of children?

IV. BIOLOGICAL MEANINGS, SOCIAL CONSTRUCTIONS, AND THE EXCLUSION SCENARIO

Children's interest in biological connection does not tell against all the motivations for reproducing persons via cloning, but it does make a bit of trouble for some of them. Consider the variation of the Exclusion Scenario that involves lesbian parenthood. Would this use of cloning present any creditable threat to the successful completion of the nonbiological tasks involved in the reproduction of persons? Possibly, in a world such as ours, "radical fatherlessness" might be distressing to some children. If we think of children brought into the world in this way as "genetically single-parent children," then if they had any desire analogous to that reported by some children conceived via AID, the circumstances of their birth would seem to render it a perfectly useless passion.

I do not disregard the importance of such "fatherlessness feelings" as there may be, but this is not actually the consequence I find most troubling. While it is not implausible to think that some children may feel some distress at this feature of their lives, I do not know whether it is plausible at all to expect many to be altogether devastated by such news. Further, *just that child* could not have been born in any other fashion than cloning, so any objections to not having a father would seem to be objections to conditions essential to their own lives. What concerns me more is that this kind of exclusion rests not just on the technology of cloning, but upon a social/moral decision to maintain what might be called the "moral distinctness" of generations. Consider that the child herself may not agree that her parents have been successful in blocking genetic connectedness to a male parent and might not agree that she has no father. She is, after all, very largely identical to the person who contributed the nucleic material for the cloning procedure, a person who was herself conceived in the usual way. Suppose that the father of the nucleus contributor is alive. If so, the child born via cloning is genetically almost indistinguishable from his child—if the cloned child is on the lookout for a father, this man might seem to be a good candidate.

Indeed, rather than see this young woman as a "genetically single-parent child," we might see her as having three genetic parents—the nucleus donor and both of her parents—and a gestational/mitochondrial parent. Or perhaps the best way to put it is that the child has a gestational mom, a genetic mom and dad,

and a sister who happens to be an identical twin despite being, say, a quarter of a century older, and gestational mom's spouse as well.

I do not believe that there is any good argument showing that such an arrangement should seem appalling on its face to all people of good moral judgment, or anything of that kind. There is no reason in principle why we could not relax and refigure prevalent notions of the moral distinctness of generations and of familial and gender roles more generally. Indeed, in some respects we *should* do so, and in some respects this *is* done. While I would hold that the patterns of moral understandings most heavily represented in the United States today customarily freight the roles of parent, grandparent, and sibling with very different kinds of expectations and obligations, there are surely times when these roles do overlap, quite without any intervention by cloning.⁷ Still, I do see a difficulty here. Who will have authority to determine what the relationships are in families of this sort—who is sister, who is mother, who is father, who is grandparent—particularly if the maturing child does not like the definitions she is handed?

What makes this situation potentially a tough one is the fact that decent cases can be made out both for the position of the putative child, who wants to ladle on her mother's father a kind of relationship that is heavily encumbered with significant duties—the role of being *her* father—and for the position of that man, who may have not the slightest interest in having anything to do with the child at all. Complicating things still further is that the “decent cases” I can imagine here rely on rather distinct kinds of moral understandings. The man can rely on a widely cherished principle in liberal political theory, the “no positive obligations without consent” principle—in other words, he can plausibly point out that he never agreed in any sense, expressly or tacitly, to be this child's father or anything in the neighborhood thereof. The child can reply that families are precisely the place where such a principle limps badly—traditional ideas of children's duties to the parents owe nothing to any such consent principle, for example—and rely for her part on the moral notion that people have special obligations to those who are specially vulnerable to them, particularly if they have been involved in the creation of the relevant vulnerability.⁸ The man in such a case might find himself in a position not dissimilar to a responsible truck driver who, through no fault of her own, has just struck someone. Such a

7. See generally Elise L.E. Robinson et al., *Fluid Families: The Role of Children in Custody Arrangements*, in FEMINISM AND FAMILIES 90-101 (Hilde Lindemann Nelson ed., 1997).

8. For a general discussion of the ethical significance of vulnerability, see ROBERT GOODIN, PROTECTING THE VULNERABLE (1985); for critical comment, see MARGARET U. WALKER, MORAL UNDERSTANDINGS (1998), especially chapter 4, *Charting Responsibilities*; and for a discussion of the nonvoluntaristic groundings of familial duties, see Hilde Lindemann Nelson & James Lindemann Nelson, *Frail Parents, Robust Duties*, 1992 UTAH L. REV. 747.

driver is *ex hypothesis* not negligent, and she certainly did not choose to go out and run someone over. At the same time, she should neither feel the same nor act the same about the accident as someone merely reading about it over her cereal the next morning.⁹

In a circumstance such as this, then, I fear cloning might propel us into a situation in which we face something of an antinomy, to borrow a Kantian expression. Children born of such arrangements may have claims against the parents of the person who supplies the nucleus, claims whose honoring may be important to a child's developing sense of her place in the narrative of her family, relating to her sense of rootedness in the world—her particular place in its history. I am concerned that these claims will not be heard, or, having heard them, that we will not know how to honor them well—particularly as they collide with other, morally well-founded claims that center on the importance of autonomy in the lives of persons, on the importance of not being “drafted” without consent into burdensome and prolonged duties.

V. THE AFFIRMATION SCENARIO

The other rationale for cloning also may complicate the social side of reproduction. Consider affirmation scenarios. Compare them to a use of reproductive abilities to achieve similar ends that do not involve cloning. A man suffers from a terminal illness. He and his wife both find their hearts eased by the idea of conceiving a child together before he dies, and they do so, in the time-honored fashion. Should this set our moral eyebrows askance? Would a practice of this kind reduce the chances that the social side of the reproduction of persons would go well? There may be some ground for concern—raising a child by oneself is a tough job, and one cannot help but wonder a bit about the expectations that the child will have to face. But these hardly seem reasons for developing a social policy discouraging such decisions.

Does this child's circumstances differ importantly from those of a child brought into the world via cloning for a similar reason? I have already suggested that, although such a child might not have any reasonable claim that her very existence wronged her, she might well have a claim, which we are not well-prepared to evaluate, to forms of relationships that we are not well-

9. This invokes the theme of “moral luck,” an idea discussed by moral philosophers interested in circumstances in which persons seem blameworthy for events whose moral character they did not cause (e.g., the responsible truck driver example) or seem excused from blame on the basis of seemingly irrelevant reasons. Contrast public attitudes towards the drunk driver who runs over a child with attitudes towards the equally drunk driver who has the luck to get home without incident. See BERNARD WILLIAMS, *Moral Luck*, in *MORAL LUCK: PHILOSOPHICAL PAPERS 1973-1980*, at 20-39 (1981).

equipped to supply. But all of these problems can be largely stipulated away. Suppose the husband—or the woman in the previous scenario, for that matter—had no living parents or had parents willing to be significantly involved in the baby's life. Note, too, that cloning in this case might be seen to be almost incidental or, at most, instrumental—the point is really to have another baby together. Cloning is attractive because it is the only way of doing so.

Despite these points, I think there is still the need to consider a couple of concerns. One concern is that it might be difficult, as a matter of practice, to distinguish between couples taking a purely instrumental view of cloning, as it were—the point is to have a child, and cloning is all that will serve—and people who are drawn by the idea that cloning will give them a child that is specially suited to the purpose because of its “less-relational” properties—someone who thinks of the child as “my husband returned,” or something of this sort. The second concern is that it might be difficult to sort out the matter even within ourselves—as I have noted, biological connection can have strong powers over our actions and imaginations, and strong physical and temperamental similarities between children and much loved departed spouses might make the task of contributing to the development of the child's sense of personal identity even more difficult than usual.

What would be so problematic were the people involved to view cloning as useful both as a way to get any new child and a way to get a particular new child—i.e., one with just those striking resemblances? Here, I am concerned about the domination of the biological, and particularly, of the genetic, in many people's minds. If the problem we faced in the exclusion scenario was the risk of not taking children's interests in genetic connections seriously enough, the problem we face here is in taking the parents' interests in genetic connections so seriously as to lessen the chances that a child's interests in individuation would be well served. But this is best discussed in connection with the Replacement Scenario.

VI. THE REPLACEMENT SCENARIO

Being drawn to cloning as a reproductive means is often associated in the popular mind with something like replacement: the cloned individual is desired because she is thought to replicate some other individual, not because cloning is a means to reproduction otherwise blocked or problematic. Another dancer just like Baryshnikov, another child just like our lost David, another child with bone marrow just like Marie's.

If families' social reproductive tasks include the formation of identity, and if that job involves providing children with both the means to identify with others and to individuate from them, it does not take too much imagination to

foresee some added difficulties here.¹⁰ Imagine the fears that might haunt people who had to accept that among the expectations harbored by those responsible for their birth is the expectation that they would fulfill not just a certain role—not just take the preordained place in the family business—but replicate a certain identity?

But again, there is more to the problem than putative psychological stresses. No one is going to dance like Baryshnikov unless he works like Baryshnikov, and perhaps not even then—if, as I have assumed throughout, the reproduction of persons is not solely biological but also social, then effective “replacement cloning” may require degrees of compulsory training that go beyond what children require for basic socialization. If, as Joel Feinberg thinks, children have some moral claim to kinds of education that leave them with a tolerably “open future,” getting what adults look for out of replacement cloning may involve closing that future off.¹¹

Again, it might be rejoined that the situation these children will face is, while perhaps not optimal, not devastating either. Lots of children are kept hard at work at the bar for hours more than they would like and do not necessarily feel inclined to end it all rather than go on—why think things would be worse for the young Mikhail? David’s cloned sibling may feel certain pressures and anxieties that his schoolfellows do not share, but he may of course weather them just fine—kids are pretty resilient—and this may be true even for Marie’s younger twin, who has to deal with the fact that she was brought into the world expressly to serve as a tissue or organ donor for her sibling. The “Ayala variation” does of course highlight the problem of whether such a child is being seen as a means to an end solely, but that is a highly contestable matter and clearly not strictly a matter of cloning. It may well be that the dignity accorded to any child is not a matter determined by the motivations that propelled her into existence, but by the way she is treated once she is among us; disrespectful treatment, unfortunately, is a risk all children face.¹²

10. See SALVADOR MINUCHIN, *FAMILIES AND FAMILY THERAPY* 47-48 (1974).

11. Joel Feinberg, *The Child's Right to an Open Future*, in WHOSE CHILD 124-53 (William Aiken & Hugh LaFollette eds., 1980). For a critical, insightful discussion of this concern and many others touched on in this article, see Robert Wachbroit, *Genetic Encores: The Ethics of Human Cloning*, REP. FROM INST. FOR PHIL. & PUB. POL'Y, Fall 1997, at 1.

12. Still, children conceived primarily for the purpose of providing useful body parts to family members do seem to run the risk of a rather distinctive kind of repudiation. For an account of a child conceived as a bone marrow donor and relinquished for adoption immediately after a successful transplant to its elder sibling, see generally B.D. Colen, *The Price of Life*, NEWSDAY, Mar. 11, 1990, at 5.

But it seems to me that the moral issue here is not settled simply by adverting to the possibility that a child may be loved for herself alone and not just for her yellow hair—or her bone marrow—nor by pointing out that lots of children born in ways wholly innocent of technology also get lots of bad raps and face real challenges in the way of successfully consolidating their identities. The issue involves, rather, identifying clearly and vividly how cloning might heighten risks, as well as offer benefits, and keeping clear who are the potential recipients of the harms and benefits, who are the responsible agents, and what are the live alternatives.

VII. CLONING, FAMILIES, AND PRUDENCE

In looking at the ways in which cloning might complicate the jobs families undertake in completing the reproduction of persons, I have found a good deal that troubles me, but nothing that quite counts as an ethical smoking pistol—no evident and inescapable violation of accepted rights, no unambiguous and grave harm inevitably attached to human cloning as such. What we have, instead, are a number of worrisome scenarios, and many concerns that need to be carefully balanced. For if there is no clear ethical barrier uniformly outraged by human cloning, so too there seems to me no plausible case that developing and disseminating human cloning technologies is demanded by any unmistakable moral imperative.¹³ There may be a technological imperative here, but that is quite another thing.

From an ethical point of view, I think, the development of a policy regarding human cloning cannot be settled by the decisive application of clearly determinate principles, but rather requires prudent judgment. Human cloning might console some people in their grief; it might relieve some of the fears of bearing children with serious handicaps; it might contribute to destabilizing heterosexist biases about the family. But it can also offer adults a set of benefits at the cost of risks to the welfare and the dignity of children, and it can more deeply instill in us a penchant for biological ways of marking human significance that may be particularly troublesome in a time when our more serious moral need is to expand our sympathies beyond the biological. In light of the reasonable concerns that cloning elicits, and the alternatives available to address

13. To maintain this article's focus, I do not discuss in the text moral objections to the developing of cloning based either on questions of safety, nor on the possibility that developing cloning in humans may require treating nonhuman animals in ways that are morally indefensible. For a discussion of the ethical implications of safety issues raised by human cloning, see generally NATIONAL BIOETHICS ADVISORY COMMISSION, *CLONING HUMAN BEINGS: REPORT AND RECOMMENDATIONS OF THE NATIONAL BIOETHICS ADVISORY COMMISSION* (1997). Issues concerning nonhuman animals have been discussed by Hilde Lindemann Nelson, *Cloning and the Family Ties That Bind*, Lecture at New York University (Apr. 11, 1997) (copy on file with the author).

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human problems as grave or graver than those to which cloning might speak, privileging other forms of research and therapy seems to me at this time the more prudent course.

