

TO: The Secretary
House of Representatives Standing Committee on Legal and Constitutional
Affairs
Parliament House
Canberra, ACT 2600

FROM: Dr Russell Blackford
351 Montague Street
Albert Park, Vic 3206

SUBJECT: Inquiry into Human Cloning

1. I refer to the above inquiry and thank you for the opportunity to make this submission.
2. The NH&MRC's Australian Health Ethics Committee has produced a useful paper "Scientific, Ethical and Regulatory Considerations Relevant to Cloning of Human Beings", which brings together much of the scientific and legal information and many of the ethical arguments in one convenient package.
3. However, the paper is deeply flawed by its lack of philosophical rigour. More importantly, it fails to develop any principled view as to the circumstances in which it is legitimate for legislation to be passed banning unpopular conduct. Thus, while it rehearses various ethical views about the private morality of cloning, it ignores the fundamental question of what Raz would call "ethics in the public domain". Since the paper calls for the passage of further legislation to ban cloning and associated research, this issue, which goes to the heart of the role of government in a liberal state, cannot be avoided.
3. My position is that, in the current state of reproductive technology, attempting to use for human reproduction the somatic cell nuclear transfer technique that enabled the cloning of "Dolly" would be reckless and unethical. The reason for this is that the technique creates a high risk that the baby will suffer from genetic malformations.
4. Although there are interesting philosophical arguments about whether the child could later complain of an act without which he or she would not even exist, most of us have no difficulty with the idea that somatic cell nuclear transfer is not safe and therefore should not be used as a method of human reproduction. However, I see no current need to pass criminal legislation to ban the technique. Furthermore, once legislative prohibitions are on the statute books, it is notoriously difficult to remove them without confronting irrational arguments that this is tantamount to giving governmental approval of the practice which is now "legalised". Notoriously, the process of "legalisation" faces major political impediments. It is better in a case such as this if the issue is left to be dealt with by medical ethics and if the medical ethical practice adapts as society and technology develop.
5. Once we step beyond the safety question in respect of the somatic cell nuclear transfer technique as a method of actual reproduction, the ethical questions are far less clear-cut. What can be said, however, is that there is no justification in a liberal society for imposing by force of law (ultimately backed up by the police power of the state) the particular

ethical views that are favoured by the Australian Health Ethics Committee or anyone else.

7. Notwithstanding the impressive credentials of the members of this committee, I believe that its chapter entitled "Ethical Issues" is open to severe criticism. Once the underlying scientific issues are explained, I doubt that this committee is any better placed to make judgments about the ethical implications than anyone else who has thought deeply about the issues. Indeed, the consideration of the issues by a committee leads to an analytical approach to the ethical questions that lacks rigour.

8. No one ethical theory is favoured by the committee. Instead, it attempts to weigh up various arguments (and, I suspect, gut reactions) and make an overall judgment about the ethics of human cloning. This approach is illogical and leads to a subjective assessment. It certainly has not encouraged committee members to subject their own moral prejudices to searching scrutiny.

9. Much, though not all, of the argument appears to be based upon "natural law" concepts of ethics that are associated with the teachings of the Catholic Church but are not generally accepted in the community. Even if these concepts were endorsed by the overwhelming majority of people, that would not be a reason to impose them on the minority by force of law.

10. Moreover, such arguments are controversial among those who have expertise in ethical philosophy as, indeed, are all of the main ethical theories. This is doubtless one reason for the committee taking what I have described as an approach that lacks rigour: any rigorous analysis, whether based on Kantian or utilitarian principles, or based on some other systematic theory of ethics, would appeal only to those endorsing that particular ethical theory. This, however, simply underlines the difficulty in a liberal society of attempting to make moral judgments and then use them as the basis for laws that ban classes of individual conduct.

11. In fact, many of the arguments in the report amount to little more than a fear of the strange if new technologies become available. This fear could have been invoked to argue against the introduction of almost any technological innovation, from the motor car, to the contraceptive pill, to modern computers. No doubt the mores and practices of our society will continue to change as new technologies become available, and Australian society in the next century may seem strange to us, just as our own society would seem strange to our Victorian forebears, but no argument is put as to why this is, in some higher or deeper sense, a bad thing.

12. More fundamentally for present purposes, there is no argument as to why it is the role of government to prevent such a thing from happening.

13. A sounder approach to the problem would have been to ask what kinds of regulation are necessary for the functioning of a liberal society with minimum impact on the decisions of people about their own life plans and conduct - including the areas of rational inquiry that they may choose to pursue as scientists. Such an approach could be extended to take into account the safety of the cloned child but it would justify very little in the way of regulation of research on embryos using cloning techniques.

14. Doubtless it is government's right to make decisions about what

research it will or will not fund, though I suggest that even this should be exercised sparingly, since governments are not necessarily well-placed to make decisions as to what areas of scientific inquiry will be productive. Nor should they exercise that right for the purpose of imposing particular moral beliefs. In any event, the approach taken by the NH&MRC's committee goes far beyond making recommendations about the use of government finance. Indeed, the committee expresses "concerns" that guidelines about government funded research are not imposed on non-government areas. This is confused thinking.

15. The debate about reproductive technologies has been dominated for too long by the voices of people who are fundamentally out of sympathy with the values of personal freedom, political liberty and moral pluralism, and the general concept of the liberal state. I urge the parliament to uphold those fundamental values and concepts and to resist the temptation of adding further layers of legal prohibition in this area.

Yours sincerely,

Russell Blackford
