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Sent: Wednesday, 15 March 2000 3:50 PM
To: laca.reps@aph.gov.au
Subject: Re March 29 meeting

Sketch submission from Philip Pettit, ANU for the meeting on March 29 of the House of Representatives Parliamentary Committee on Legal and Constitutional Affairs.

Background

1. We should distinguish between an ecumenical ethics and an ethics tied to a particular metaphysical or religious view of the world. An ecumenical ethics articulates the sense of what is right and what is wrong that we should expect good-willed people to agree on, whatever their metaphysical beliefs.
2. In looking at the ethics of cloning in relation to human beings, it is clear that we as a community, and the House of Representatives as a legislative body for that community, should be looking at the issues on the basis of considerations from ecumenical ethics. We are not concerned with whether cloning should be conducted, or how it should be regulated, from the point of view of any particular metaphysical view of the world.
3. This is not to say, however, that religious views should be ignored in the conversation. Not at all. If the legitimization, or non-prohibition, of a certain practice is found offensive to a particular religious group then that is a consideration that counts against it. Were other things equal, then the community might respect the views of the group in question by not legitimating the practice.
4. Of course in this area, as in so many others, the difficulty is that other things are never equal. If we assume for the moment that any form of cloning, even that which counts in the general view as therapeutic, is found offensive by certain churches, that is a mark against it by everyone's lights. But it may not be a sufficiently significant mark against it to support, say, the prohibition of such cloning if there are significant benefits that are likely to ensue from allowing the practice to proceed. To make it a mark of such weight that it would argue against all such benefits would be improperly to favour members of the churches in question. It would be to break faith with our pluralist character as a community.

The existing guidelines

1. This general attitude is well expressed in the first paragraph of the relevant section ("Research on Embryos") of the NHMRC's 1996 'Ethical Guidelines on assisted reproductive technology'. It reads:
'Research involving early human embryos raises profound moral and ethical concerns. There are differences of opinion amongst Australians regarding the moral status of the human embryo, particularly in its early stages of development.' Whatever is recommended by the Parliamentary Committee, I think that the recommendations should be in the spirit of this acknowledgement of the pluralism of views in our society.
2. Those guidelines would allow research which does not harm the embryo and would countenance the approval of research which does not leave the embryo in an implantable condition, in exceptional circumstances. The document illustrates what is envisaged here by specifying that for an IEC to approve such research there should be the likelihood of a significant advance in knowledge or improvement of technologies of treatment; the research should involve only a restricted number of embryos; and the gamete providers and partners should have consented to the research.
3. Whatever happens as a result of recent discussions, it would be amazing if these guidelines were made in any way stricter. After all, the only change since the appearance of those guidelines has been that we have learnt about the wonderful possibilities of a significant increase in knowledge and of an improvement in technologies of treatment.

Other considerations

1. In thinking about the ethical issues raised by the forms of research with which we are concerned, it may be useful to make a number of distinctions.
2. One distinction is between the different issues raised by embryonic stem cell research. These bear on whether it is right
 - a. to reproduce a human embryo
 - b. to produce a human embryo for research
 - c. to render an embryo non-implantable in the course of research
 - d. to use an embryo in research, whether or not it is thereby rendered non-implantable
3. Another distinction is between the different issues raised by the possibility of nuclear transfers. These bear on whether it is right
 - a. to reproduce an individual
 - b. to dedifferentiate a cell to totipotency
 - c. to dedifferentiate a cell to pluripotency
 - d. to redifferentiate for therapeutic purposes
4. Yet another distinction is that between whether it is right
 - a. to do any of these things
 - b. to have a legal or administrative regime under which they may be done.
5. In judging on any of those issues (2a-2d, 3a-3d, 4a-b), it is also important to be clear about what criterion of ethical evaluation one wants to use. Criteria include:
 - a. What benefits are in prospect if the activity is pursued or allowed?
 - b. How safe is the activity in question?
 - c. Is the activity consistent with reverence for human life, even embryonic life, such as people acknowledge on all sides, not just in any particular religious world-view?
 - d. Does the activity show sufficient respect for the persons involved?
 - e. Is the activity containable, or is it bound to lead to other forms of activity that are objectionable on all sides? Is there a regulatory regime, in other words, that might license the activity while guarding against such slippery slopes?
6. The one lesson taught by this plethora of distinctions is that only a cynic could recommend a blanket treatment of the questions involved. Quite different issues are raised under 2 and 3, for example. And in each area, the questions distinguished are so different that it would be silly to suggest a single line.

Conclusion

1. This is written in haste, as I said, and I have no wish to bombard the committee with my personal judgments on these issues. I believe the the committee and the community as a whole needs to think through the different questions involved in the light of the many considerations that are relevant and that only by such a means is there a hope of reaching a reasonable conclusion that will command respect and understanding, if not agreement, on all sides.
2. Above all else, the committee needs to be staunch in resisting those who are declaring a moral panic and are seeking premature and absolute closure. If we are to prove ourselves a morally mature, plural society we need to listen as well as talk to each other and we need to look at the possibility of a regulatory regime that will remain open both to how that ethical conversation goes, and how scientific research develops.
3. Finally, I believe that in thinking about the relevant ethical and regulatory issues we should take ourselves seriously and not be moved by a thought I have heard some air that it doesn't

matter what we do; we will still be able to benefit from the research that goes on elsewhere. This represents an ethical version of the colonial cringe that we have learnt to put aside in other areas.

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