

Submission to
Australian Senate
Community Affairs Legislation Committee
Re
Legislative responses to
recommendations of the Lockhart Review

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1. Introduction

The Queensland Bioethics Centre serves the Catholic dioceses of Queensland and acts as a resource for the wider community. Through its Director, the Centre offers consultation, research, counselling, instruction and provision of information on contemporary questions associated with bioethical issues.

The director is the spokesperson for the Catholic Archdiocese of Brisbane on bioethical issues.

I appreciate this opportunity to comment upon the *Legislative Responses to recommendations of the Lockhart Review*.

The Catholic Church recognises the importance of ongoing research for the improvement of the medical treatment of disease and to further the well being of all persons. The guiding principle of all research and legislation governing research should be the inviolable dignity of the human person. As Pope John Paul II expressed it: "The Church respects and supports scientific research when it has a genuinely human orientation, avoiding any form of instrumentalization or destruction of the human being and keeping itself free from the slavery of political and economic interests" (Address to the Pontifical Academy for Life, February 24, 2003).

The positions put forward in this submission are not based upon religious argument, but upon sound reasoning, science and respect for basic human values.

2. The Lockhart Review.

As this inquiry and the relevant legislation is a response to the Lockhart Review it is appropriate to begin with comments upon that review and its Report.

2.1 The Membership of the Lockhart Committee.

Many have referred to the Lockhart Review as an "independent committee". My immediate question is "independent of what?"

The Lockhart Committee was a creation of the Council of Australian Governments (COAG). The members seem to have been nominated by the Prime Minister and the State Premiers. So in one sense the Committee was not independent of its political masters.

However there appears to have been no attempt to assure a representation of a cross section of the community nor even a representation of diverse views within the scientific community. At least three of the members were on the

public record as supporting so called “therapeutic cloning” before being appointed to the committee. In this way the committee was “independent” of the normal political process. In the normal political process committees represent the community interests and some of the diverse views within the community. This was sadly lacking in the Lockhart Committee. This is not a reflection upon the individuals who made up the Committee, but is a fault of the process followed in appointing the Committee. A more balanced committee would have produced a vastly different report.

2.2 The Lockhart Committee Report.

According to the terms of reference for the Lockhart Committee they were to assess whether there was a need for any amendments to the Prohibition of Human Cloning Act 2002 in terms of “developments in medical research and scientific research and the potential therapeutic applications of such research”.

There will probably never be agreement upon what constitutes *genuine* “developments” in scientific research. Furthermore how one evaluates that development as regards the future is likely to depend upon one’s values.

It is not my intention to review everything put forward by the Committee as to whether it was a genuine advance in the area of *human* cloning. In the body of the report these “developments” receive only three short paragraphs. The only substantial studies referred to are those by *Hwang et al 2004* and *2005*. We now know that these studies were fraudulent.

Once these studies are removed there is very little if any scientifically validated evidence of developments in human cloning. Indeed, leaving aside for a moment other ethical objections to human cloning, there is still no proof of concept which would justify the creation of embryos for research purposes.

Another element of the terms of reference for the Lockhart Committee was to adjudge developments in “community standards”. The Lockhart Committee’s approach to community standards was novel and not scientifically based. A Swinburne University study published in 2004 clearly indicated that the majority of Australians were not comfortable with scientists cloning human embryos for research purposes. Although this research was available to the Lockhart Committee, no reference is made to it. A more recent study by the Sexton Marketing Group for the Southern Cross Bioethics Institute gave a similar result.

There would appear to be no grounds for asserting that community standards have changed since 2002. The Lockhart Committee’s rather novel treatment of “community standards” seems to have been a way to avoid this fact. Indeed a frank appraisal of the submissions received by the Lockhart

Committee would also seem to support these figures. Once again, the Lockhart Committee failed to give a breakdown of the number of submissions that supported a change in the legislation and the number which opposed it.

Due to the non-representative nature of the membership of the Lockhart Committee and due to its selective reading of the evidence, the Lockhart Report is rather lacking in credibility and it would be very remiss of Parliament to base legislative change upon such a report.

3. The Proposed Legislative Changes

I will here consider some of the proposed legislative changes proposed in Senator's Patterson's Bill. Most of these comments would also apply to Senator Stott Despoja's Bill.

3.1 Definition of the embryo

Senator Patterson proposes a new definition of the embryo in keeping with the Lockhart Review with a slight variation. The sum effect of this change is to declare that the human embryo does not exist until the first mitotic division. This is a totally arbitrary starting point. The two cells are the next stage in the development of the one entity, the single cell entity which was formed by the fusion of the two cells at fertilisation. This single cell has a completed human genome and is already organised for further development.

The Senate Inquiry of the Community Affairs Legislation Committee into *The Provisions of the Research Involving Human Embryos and Prohibition of Human Cloning Bill 2002* addressed the question of the beginning of human life. After hearing all the scientific evidence the Chair, Senator Sue Knowles in her report commented: "There is in fact little disagreement that the embryo is a human life and that its life commences at fertilisation." (3.30, p.42)

Senator Patterson's legislation (and the recommendation of the Lockhart Committee) flies in face of all the scientific evidence. Rather than a definition based upon the nature of a thing, we are presented with a definition which has as its sole purpose to exclude an entity from legal protection and hence make it legal to experiment with it. History should make us wary of such arbitrary exclusions.

Senator Patterson's definition is also problematic in that it makes the identity of the embryo contingent on the future appearance of the primitive streak. If the primitive streak only appears with implantation, then someone who had no intention to implant a cloned embryo could argue that therefore they were not dealing with an embryo under the definition in the proposed Act. Hence the entity would be outside the regulatory framework.

The very emergence of this definition and its incorporation into the Lockhart Report is interesting. As far as I know this definition has not at this stage been accepted by the NHMRC. It is the product of a Working Party. Some have referred to it as a definition developed by an "independent" group. Once again one has to wonder about the meaning of "independent". It would appear that at least half of the working group are heavily involved in the IVF industry. One wonders how many international experts in embryology were consulted about this novel definition.

3.2 The creation of human embryos through cloning and their destruction.

Senator Patterson's legislation proposes to allow that which every parliament in Australia rejected just four years ago, namely the creation and destruction of human life for the purpose of scientific research.

It is obvious that once again crucial to this issue is the question of the **status of the embryo**. However there is a distinct difference now to the question which was addressed in 2002.

Many politicians voted in favour of the Human Embryo Experimentation Bill because it involved the use of embryos who were surplus to the needs of IVF and who would be allowed to die anyway. While accepting this position many asserted that the idea of creating human life for the purpose of scientific research was a step too far. Senator Patterson herself portrayed herself as sharing this view.

In its discussion on the moral status of the embryo the Senate Inquiry chaired by Senator Knowles suggested there were three possibilities.

- a) The embryo has no moral status at all
- b) The embryo has the same moral status as an adult;
- c) The embryo has limited or different moral status compared with an adult human being, a sort of in between; a third way, as it is called.

The Senate report admits "very few argue that the human embryo has no moral status at all." (3.16, p.39) That in itself is an interesting comment. After taking submissions from people all over Australia and beyond, submissions from people in favour of destructive embryo experimentation and those against, the Committee concluded that "very few argue that the human embryo has no moral status at all".

Of course the majority report of that Inquiry went on to propose some kind of third way. The manner in which the committee arrives at this third way is not well founded. But leaving that aside, if this third way means anything at all it surely means that it is not fitting to create embryos in order to destroy them.

If it does not mean at least this then it would appear to be nothing but empty rhetoric. If the supposed limited moral status of the human embryo does not protect it from being created and destroyed as a mere means of scientific inquiry then what does it entitle it to?

Some seem confused about what is the outcome of the process of somatic cell nuclear transfer. One politician has written to constituents claiming that the embryo would have to be fertilised in order to become a baby!! The successful outcome of somatic cell nuclear transfer using a human egg and human somatic cell would be a human embryo. Such an embryo would possess the human genome and have all of the organisation necessary to direct its own ongoing development providing it was placed in the right environment. Scientists *require it to grow as an embryo* at least to the blastocyst stage so as to harvest the stem cells. Such an embryo has the same inherent human dignity as an embryo produced by normal fertilisation.

The parliament of Australia should not agree to creating human life with the sole view of destroying it in the interest of somebody's "science".

3.3 The creation and destruction of human-animal hybrids.

Senator Patterson's legislation goes further than simply permitting human cloning. The Bill further dehumanises the human embryo and the human reproductive process by permitting the creation of human-animal hybrids through the use of animal eggs. Given that the embryo would be formed from a human nucleus it would be human, although possessing some foreign DNA from the mitochondria of the animal egg.

There is no evidence that community standards have changed to such an extent that the Australian public is comfortable with this proposal. The general reaction to such a proposal is one of repugnance. Such repugnance is I would suggest because people recognise almost instinctively that this is a further degradation of the human person and of the reproductive process.

Conclusion

The procedures which Senator Patterson's Bill seeks to legalise (under licence) are inherently immoral as they strike at the dignity of the human person. There can be no scientific evidence to justify proceeding with such procedures. The United Nations General Assembly rejected all forms of human cloning calling on member states to prohibit all forms of human cloning as being incompatible with human dignity and the protection of human life.

Even if one accepted a utilitarian ethic (supposing that such an ethic was workable, which we know it isn't), it could well be argued that there is no

evidence to indicate that the benefits will outweigh the harms. On the contrary Dr Peter Hollands, the Chief Science Officer of the UK Blood Bank and early pioneer of embryonic stem-cell research argues that if the people are made aware that cord blood offers superior benefits over embryonic stem-cells then “embryonic stem-cell groups will find it impossible to justify their actions.” (LifeSiteNews.com Thursday August 24, 2006).

Senator Patterson’s Bill should be defeated in its entirety and the present prohibitions should remain in place.