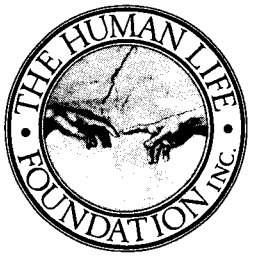
the HUMAN LIFE REVIEW



SUMMER 2001

Featured in this issue:

Special Section:

The Case Against Embryonic Stem-Cell Research

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ABOUT THIS ISSUE . . .

. . . this Summer issue was typeset and almost ready to go to the printer when the morning of September 11th arrived. Time now is divided into Before and After: the pages that follow were written Before, and many of them discuss what was a big summer story, the embryonic stem-cell research debate. Although we are now in the After, we have decided not to hold an issue that had already been delayed by the President's (unexpectedly early) August address to the nation. And, though we now exist in a changed culture, and a changed world, there is no change in the principles which the *Review* exists to defend; on the contrary, the recent catastrophe in our city has emphasized the sanctity of individual life in an unspeakably painful way. Indeed, the editors of the *Review* can find no words adequate to express our horror and grief at the disaster that hit our country and our city. We are grateful to God that we and our close families have been unharmed, physically, but some of us are grieving the loss of friends and neighbors, and all of us are reeling from the enormity of the evil that tore into our home. We extend our prayers and sympathy to our readers who have suffered the loss of loved ones.

—THE EDITORS

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INTRODUCTION

The Summer of 2001 may well be remembered as the summer of The Great Stem-Cell Debate; we have devoted a good portion of the journal to the subject that caught the country's attention and was the subject of President Bush's first major televised address to the nation on August 9th. Bush's decision that he would allow research only on existing stem-cell lines ("where the life and death decision has already been made") divided the pro-life movement: reactions ranged from the National Right to Life Committee declaring themselves "delighted" that the decision "prevented the federal government from becoming party to any further killing" of embryos, to Bishop Joseph A. Fiorenza, President of the U.S. Conference of Catholic Bishops, calling it a "morally unacceptable" trade-off: "for the first time in history," the federal government "will support research that relies on the destruction of defenseless human beings for the possible benefit to others."

"The point is we should never have gone down this road to begin with." This statement, by Bishop Elio Sgreccia of the Pontifical Academy for Life (quoted in our lead article), strikes us as the point indeed. The status of the embryo is not a new question; since *Roe* v. *Wade,* we have travelled so far down a deadly road that today America's highest court not only protects a woman's right to abort her baby, but also protects the right of "doctors" to perform partial-birth abortions on babies just inches away from being fully-born. The embryonic stem-cell research debate, in some ways, brings us back full circle, to the very first moments of life. Yet there is a new, disturbing direction. *Roe*'s purpose was to declare a "clump of cells" meaningless when compared to a woman's "freedom"; now that embryos have been declared to have enormous potential for *others,* the "pro-research" movement is claiming

a "right" to destroy them, for the "greater good" (of larger humans).

Of course, we wouldn't have thousands of embryos to tinker with if it hadn't become possible and then acceptable not only to fertilize eggs outside of the womb, but to create and freeze "extra" embryos. In vitro fertilization is now commonplace, and it's nobody's business but the doctors, it seems, how many extra embryos are deemed necessary for a successful attempt at pregnancy. Pro-lifers are in a difficult position—we didn't want to come down this road, but we *are* here: what ought to become of these tiny frozen beings?

Thus the subject of Brian Caulfield's lead article: "Pregnant Pause: Where Do Frozen Embryos Belong?" Amidst the chorus of voices calling for the destruction of frozen embryos for research, there are many who think that these embryos, rather than being killed or allowed to die, ought to be adopted and given a chance at "normal life." If you watched the congressional hearings in July, you might have seen people with children who were adopted as embryos (through the California agency Nightlight Christian Adoptions, which has the "Snowflakes Embryo Adoption Program"). The beautiful children are a powerful witness to the "potential" of the embryos. Yet this kind of adoption has split some of those who usually see eye-to-eye on these issues. Caulfield writes that while prolife ethicists and moral theologians agree "that life begins at fertilization and must be protected at every stage till natural death . . . regulars to these [the *Review*'s] pages find themselves on different sides of the question" of adoption. Caulfield interviewed several key prolife figures for their views, including two Catholic theologians, who draw from the same tradition to reach opposing answers.

In an interview soon after he was named by President Bush as the head of the new presidential council on bioethics, Dr. Leon Kass characterized himself as knowing the important questions, even if he was not certain of the answers. *Review* readers will be familiar with Dr. Kass, a medical doctor and professor at the University of Chicago, who has been raising exactly the right questions for some time: his writing on the crossroads of science and morality in the new technology has appeared several times in our pages. Kass' essays on our frightening new world of bio-technology are unparalleled in their clarity, both scientific and moral: he is an "ethicist" whose views are formed as much by his knowledge of science (he has a doctorate in biochemistry from Harvard) as by his profound belief in the dignity and value of human life, and his distrust of some of the inhuman promises of the new technologies. We had already slated the next piece by Kass (which originally appeared in *The New Republic*) for this issue; as it turns out, it could not be more appropriate for us to give Kass' work further exposure, for the wisdom he brings to the currently-debated issues of embryonic stem-cell research and cloning.

In his article, "Preventing a Brave New World," Kass uses the Aldous Huxley novel as a point of reference: we are not yet "there," at a place which still

revolts readers, and yet the "kinships are disquieting, all the more so since our technologies of bio-psycho-engineering are still in their infancy, and in ways that make all too clear what they might look like in their full maturity." Kass lays out for the reader a clear explanation of what cloning entails, and why all cloning should be banned—perhaps most crucial, he tells why it *is* still possible to put brakes on this "runaway train now headed for a post-human world and to steer it toward a more dignified human future." (Lending suport to his hope: on July 31st, the House of Representatives voted overwhelmingly to ban human cloning.) Kass also has valuable words about stem-cell research:

> Numerous recent studies have shown that it is possible to obtain highly potent stem cells from the bodies of children and adults—from the blood, bone marrow, brain, pancreas, and, most recently, fat. Beyond all expectations, these non-embryonic stem cells have been shown to have the capacity to turn into a wide variety of specialized cells and tissues. (At the same time, early human therapeutic efforts with stem cells derived from embryos have produced some horrible results, the cells going wild in their new hosts and producing other tissues in addition to those in need of replacement . . .)

This is not the kind of information most Americans glean from press "coverage" of the stem-cell debates. Rather, the media has overwhelmingly focused on the celebrity faces of suffering (Christopher Reeve, Michael J. Fox), who beg us to accept that there can be no equivalence between a "tiny" bunch of cells and "real" people who might be helped. Sadly for them, what's also lost in the media hype is that any "miraculous cures" resulting from embryonic stem-cell research are still in the "wishful thinking" of the scientists.

The lack of clarity, to put it kindly, involved in press reports on the embryonic stem-cell debate has been so widespread that we decided to devote a lengthy special section to reprints of the best pieces we have found on the subject. The articles are divided (somewhat) chronologically, from those written before to those written after Bush's decision. We start with a collection of columns by our regular contributor, Wesley Smith. Smith, who has been an untiring, eloquent voice against euthanasia, has written quite a body of excellent material on the real facts about stem-cells—both embryonic and adult—and the politics that have dominated the debate. All of the columns that follow have been chosen for their precise information, accessibility, and importance, and, taken together, they provide a valuable overview of the debates, not just here but abroad as well. For example, Ramesh Ponnuru of *National Review* writes eloquently about the sentiment that clouds the simple logic of the pro-life position, which has caused some who are "usually pro-life" to justify embryonic stem-cell research. And Daniel Johnson of the London *Spectator* writes of the "sordid isolation" of Britain: it was the first country to legalize the "therapeutic" cloning of human embryos. Our *Review*'s history is mentioned in a column by Cal Thomas, in which he speaks about Nancy Reagan's

support for embryonic stem-cell research, and what he believes her *husband* would want, based on the views he put forth in an article for the *HLR* in 1983, *Abortion and the Conscience of the Nation.* (Readers may download that article at our website, *humanlifereview.com.*)

In the 1980's, my late father (founding editor J. P. McFadden) had a warm correspondence with the novelist Walker Percy, who was anti-abortion and an admirer of the *Review.* (Long-time readers might remember that we published Percy's "Letter to the Editor" of the NewYork *Times re* abortion in 1988 because the Times *wouldn't.*) As I was looking through some of my father's files recently, I came across a letter to J.P. from Percy (who was also an MD), written in May of 1981. "It seems to me," he wrote, "that the debate is gradually

> devolving upon a critical point. Namely, what is the status of the fertilized ovum? I would assume that as soon as the genetic material of the ovum and sperm fuse to form a new nucleus, a new individual comes into existence. That is to say, setting aside all theological issues of soul and creation, and using only accepted biological principles—a new organism comes into existence.

As you'll read in several places in this issue, the current "jargon" used about embryonic stem-cell research refers to "blastocysts" and "pre-embryos." A blastocyst is by *definition* an embryo; as for "pre-embryo," this is as nonsensical as "potential human." As Percy wrote 20 years ago, no matter how we couch the question, the biology remains clear: a new being comes into existence at conception, and calling it a "blob of tissue" in the 1970's or a "pre-embryo" in the 21st century cannot change the biological facts. I found another interesting handwritten comment from Percy: "*Roe* v. *Wade* is going to be reversed like *Dred Scott*, not because of abortions—to which too many people are indifferent—but because the logical and inevitable consequence of *Roe* v. *Wade* is getting rid of not only unwanted unborn children but unwanted born children. Why not? Once the principle is admitted . . ."

"Once the principle is admitted." In our current debates, the principle is no less important. In "The Stem-Cell Slide," Michael Novak writes: "The president tried to maintain a position of principle, but what he ended up doing, despite his best effort, was giving away the principle. He put the Full Faith and Credit of the U.S. government behind the principle of using human beings as a means, albeit for noble ends."

We now leave our special section, but we continue the examination of embryonic life in our next full article. In "Feticide in the MeAm Lo'ez," Professor Richard Nadler takes us through Jewish tradition, scripture and history to show that traditional Judaism is blatantly "pro-life": that "God actively creates human life. The material from which that life is created, the process by which it is formed, and the soul with which it is endowed are all sanctified, i.e., set aside for God's special use." Nadler focuses on the "guided tradition" of the MeAm Lo'ez, "Orthodox Judaism's most popular adult education series,"

which "summarizes Jewish law, history, philosophy, customs and mysticism. . . ." Nadler's article is a fascinating and meaningful lesson on Jewish teaching, history and the "Jewish pro-life tradition." And his beautiful words can be applied to the embryonic stem-cell controversy: "The question 'When does human life begin?' makes no sense in traditional Judaism if it focuses on the process of conception, gestation and birth. The true answer resides in Who created it . . . human life has a sacral character, set off from the rest of creation by its eternity. . . ."

We now go to a story that takes place in the Holy Land itself. *Review* contributor and Jewish pro-life activist Sandi Merle reports on an amazing journey she made last spring—her trip to Israel, accompanied by Mary Ward, sister of New York's late archbishop, John Cardinal O'Connor. The purpose of the trip was to attend a ceremony honoring Cardinal O'Connor for his role in bringing about an historic affiliation between the Assaf Medical Center in Israel and Our Lady of Mercy Medical Center in New York. As Merle explains the nature of the partnership, she also gives a riveting account of their visit to the Children's Room at Yad VaShem (Memorial Museum of the Shoah), a place where the memories of murdered children are a piercing witness to the sanctity of life.

Our final article reports on another battlefront in the war between the cultures of life and death: the treatment of those who are in a so-called persistent vegetative state, "PVS." David Oderberg, a philosophy professor at England's Reading University, prefers to say "a persistent *non-responsive* state (PNS)." In "Starved to Death By Order of the Court," he writes about Britain's Human Rights Act, and how it has been interpreted in the "treatment" of some patients—resulting in their deaths. He focuses on one justice, Dame Elizabeth Butler-Sloss, whose pro-euthanasia decisions have demonstrated a deliberate disregard not only for medical evidence but also for any professional opinion that does not support killing PNS patients. Oderberg also reports the story of a woman who regained consciousness after being *starved for two months;* this makes for a chilling reminder that the momentum of the death culture not only threatens those at both ends of life's spectrum, but all of us in between.

We thus complete another issue, on a grim subject—but with hope: the woman mentioned above, so Oderberg tells us, is "now reading for an Open University degree"! As we continue to chronicle the life and death struggles of our not-so-brave New World, we once again thank Nick Downes for his cartoons—we do believe that good laughter is a solace in troubling times.

MARIA MCFADDEN
EDITOR

Pregnant Pause:

Where Do Frozen Embryos Belong?

Brian Caulfield

They rest at temperatures approaching absolute zero, in a state of suspended animation. Conceived in a manner inconceivable in our fathers' youth, they are truly *sui generis*, the in vitro product of disembodied male and female gametes, the offspring of partners who may never even have met.

By the law of the land, they are "potential life"; yet their potential to improve lives makes their destruction valuable. In a culture obsessed with self, they are afforded no identity and treated in terms of what they can do for others.

Small beyond seeing with the unaided eye, they are frozen embryos, confined to a dark, absurd world of liquid-nitrogen cryopreservation. They are prevented from doing what comes naturally to their kind—divide and grow. If left in the frozen state, they will expire after a decade or so. Yet they are considered by many to be miraculous, even "magical," in the potential of their stem cells for curing diseases such as Parkinson's, Alzheimer's, and diabetes. Thus these beings rest at the center of a firestorm of controversy that has divided political alliances and brought forth cries for research at any cost from Hollywood's beautiful people who would ever remain that way.

Even usually clear minds have gone fuzzy on the issue. In his New York *Times* political column, William Safire, the culture's language arbiter, commits a sin of imprecision while pushing for federal funding of stem-cell research ("Stem Cell Hard Sell," July 5). In the style of the political flack he once was, Safire writes, "The most flexible and versatile stem cells appear to be those taken from excess blastocysts (groupings of under 30 cells just becoming embryos) created in the laboratory for infertile couples, frozen and scheduled to be discarded."

Safire's biology is fatally wrong. If he doesn't have a current medical textbook at hand, a recent Webster's will do well enough: a blastocyst (or blastula) is "an embryo at the stage of development in which it consists of one or several layers of cells around a central cavity, forming a hollow sphere." Blastocysts, the language maven ought to know, are not "just becoming embryos," they *are* embryos.

Reading further into his imprecision, we have to ask: Does Safire actually

Brian Caulfield is the managing editor of *Columbia*, the monthly magazine of the Knights of Columbus. He is the father of a son, Stephen, about whom he wrote in our Spring 2001 issue.

believe that the "most flexible and versatile" stem cells "appear to be" *only* those taken from "excess blastocysts . . . scheduled to be discarded"? Surely not. He presumably knows that a fresh embryo due to be implanted in a womb would have the same properties. And he does concede that there is this hitch: The "doomed blastocysts, which have never been inside a person, are potential people, however remote that potential."

By now he expects the reader to say, "What's a potential-person, becoming-an-embryo, doomed blastocyst compared with born persons seeking cures for debilitating diseases that are causing them agony and their loved ones untold emotional suffering?"

Safire finishes with an appeal to an "ethical philosophy," summed up as "the greatest good for the greatest number." This utilitarian creed begs the question. Those who oppose embryo research do so precisely because they claim that killing embryos is a manifest evil, and that you may never do evil so that good will follow for however many.

William Safire is not the only high-placed voice favoring the dismemberment of embryos. Legislators known to be pro-life have joined the chorus, saying that killing these young ones to save the lives of older ones is the truly "pro-life" thing to do. The issue of federal funding will be decided by the time you read this, but the truth of the matter still must be set out.

Indeed, there are many in our society who see these hundreds of thousands of frozen embryos for *who* they are and seek to give them a chance at normal life by "adopting" them into the womb. When thousands of frozen embryos were slated for destruction in England a few years back, a number of women offered to become their mothers. A California company, Nightlight Christian Adoptions, specializes in making such matches through its Snowflakes Embryo Adoption Program.[1]

Yet these adoptions themselves raise moral questions which are hinted at by the statement of a "Snowflakes Adoptive Mother" on the company's website: "It's an incredible concept that I am both birth mother and adopting mother . . . What an awesome story we'll have to tell our children—that God let one family start them and another family complete them."

The two-mothers concept gives some ethical experts pause. If you accept that the normal moral way for a woman to become pregnant is through relations with her husband, does defrosting an already-conceived embryo and implanting him or her in a woman's womb violate natural law? Is it a perversion of the marital act that involves a woman, however well intentioned, in grave immorality?

These are some of the questions that have divided medical ethicists and

moral theologians who agree on almost every other issue regarding human life. The moral experts I am referring to all agree that life begins at fertilization and must be protected at every stage till natural death, and that the thousands of frozen embryos worldwide have identity, dignity, and an inherent right to life. They agree that living beings may not be disposed of, yet they disagree over where and how these embryos may be placed to live out however many days God grants them.

Regulars to these pages find themselves on different sides of the question. Msgr. William Smith, a professor of *moral theology* at St. Joseph's Seminary, Dunwoodie, bases his reasoning on the Catholic Church's definitive document on bioethics, *Donum vitae*, published in 1987. Msgr. Smith says that there is no moral way to implant a frozen embryo into a woman's womb and that therefore, unfortunately, the embryos must be allowed to expire naturally in their unnatural state. Dr. William May, professor of moral theology at the John Paul II Institute for Studies on Marriage and Family in Washington, D.C., draws from the same Catholic tradition to conclude that it is permissible for a willing woman to give an embryo the only chance it has at being born into the world. Dr. May says that even single women may engage in this activity and give the babies up for more traditional adoption after birth.

In coming to their opposing conclusions, these two experts define differently the moral object (what is freely chosen by the person acting). Msgr. Smith maintains that "adopting" an embryo amounts to a form of high-tech surrogate motherhood, which distorts natural sexual and family relations. A woman's choosing to become a biological mother in the sense of being *pregnant* with the child cannot change the fact that she is not the biological mother in the *genetic* sense. This is surrogacy, the monsignor argues, even if the woman plans to keep the child after birth. He points out that *Donum vitae* classifies surrogate motherhood as illicit, and he quotes from the document regarding frozen embryos: "In consequence of the fact that they have been produced in vitro, those embryos which are not transferred into the body of the mother and are called 'spare' are exposed to an absurd fate, with no possibility of their being offered safe means of survival which can be licitly pursued."

In his book published last year, *Catholic Bioethics and the Gift of Human Life* (Our Sunday Visitor), Dr. May devotes one section to the issue of embryo adoption, laying out the arguments of those who oppose and those who approve the procedure and adding his own reasons for approving. Rejecting the notion that "the moral object specifying the human act of a woman who

seeks to rescue a frozen embryo" is surrogate motherhood, May concludes that the "precise object in *rescuing the frozen embryo* is thus more properly identified as *transferring it from the freezer to the woman's womb,*" or adoption [emphasis in original].[2] The act of adoption requires providing a home for the one adopted, and the only proper home for an embryo is a womb. Msgr. Smith thinks Dr. May and others of his view are allowing the good intention of embryo adoption to define the act itself. "I know what the couples intend: to adopt. But what do they have to do to bring that intention about?" he asks. The act of making yourself pregnant, of "donating your womb," violates the "underlying principles of the procreative act and the nature of marriage," he insists.

Dr. Daniel Sulmasy, O.F.M., a Franciscan brother and physician, who heads the medical-ethics department at St. Vincent's Medical Center in New York, sides with Msgr. Smith. In embryo adoption, he maintains, a woman who is not the genetic mother is taking on a condition, pregnancy, which in moral terms is connected to preceding (and exclusive) acts of intercourse with her husband. The fact that a woman gets pregnant apart from such intercourse "creates a situation in which there is in a sense a third biological parent, the 'adopting' mother. This introduces new complications and unfamiliar familial relationships which are in and of themselves problematic." Allowing the embryos to die in their frozen state is the only moral response that Dr. Sulmasy sees. The author of *Killing and Allowing to Die*, he states, "This would be a version of allowing to die. They will die as natural a death as possible given the unnatural course of their lives."

Robert George, a professor of *politics* at Princeton, agrees with Dr. May that a woman's choice to adopt a frozen embryo may in some cases be laudable. He does concede that this sort of adoption may involve using your body as an instrument, a means, and that doing so may reduce the value of the body and of pregnancy as goods in themselves. However, Professor George concludes, there is "a more compelling case for permissibility." He points out that the Catholic Church has not made a definitive statement on this new technology, which means that theologians and other experts have a duty to come forward with their best arguments on a still-developing issue. The difficulty of the questions, he adds, obliges those on both sides to work out their answers in humility and mutual respect.

Bishop Elio Sgreccia, of the Pontifical Academy for Life, said last spring that embryo adoption has "an end which is good" and cannot be dismissed as illicit. But given the high failure rate of implantation and the fact that the process of freezing and thawing may cause many embryos to suffer genetic damage, he concludes, "Can we really counsel women to do this? It would

mean counseling heroism . . . The issue is one big question mark. The point is we should never have gone down this road to begin with."[3]

Richard Doerflinger, a spokesman for the U.S. Conference of Catholic Bishops, raises an additional question. Doerflinger, who has gone before Congress during the stem-cell debate to defend the lives of frozen embryos, tends to favor embryo adoption in theory but has doubts about its prudence. Reminding us that the Church views in vitro fertilization (IVF) as immoral in itself, Doerflinger wonders whether it is wise to cooperate with IVF clinics in recovering the frozen embryos for adoption. Would such cooperation give IVF a more positive moral spin and raise the status of the clinics, with the result that more people will seek IVF and more embryos will be frozen?

The issue is not just a Catholic one. Pro-lifers of all backgrounds have an interest in how embryos are treated. Clarke Forsythe, head of the nondenominational Americans United for Life, says that AUL has no official stand but he personally sees no moral objection to embryo adoption. He adds, however, that the difficult debate should lead to laws regulating the number of embryos that can be produced in any given attempt at fertilization. Ideally, he says, no embryos should be left over and frozen, because immersing a person in liquid nitrogen with the intention of keeping him or her there for an undetermined length of time violates that person's dignity. "Pro-lifers have fallen down on this issue and over the past 25 years have done little to discourage the production of 'excess' embryos," he admits. For those already produced, he adds, "We've got to get the issue beyond the abstract . . . Adoption is a good alternative beyond all the bad alternatives."

Keeping the embryos alive in liquid nitrogen could, as Msgr. Smith has pointed out, be considered "extraordinary" means of life support, and there is no obligation to use extraordinary means to keep a person alive. However, what if someone is willing to take them out of the extraordinary state and give them a very ordinary, in fact necessary, means of support—i.e., a womb?

I spoke recently with one Catholic woman, married for years and childless, who was disturbed to find that the Church has no settled teaching in this area. She could not see why embryo adoption might be viewed as a violation of marital or family integrity, although she did admit that opening her womb to a life produced by strangers was not what she had in mind when she took her marriage vows. Like normal adoption, she conceded, embryo adoption is not ideal, but again like normal adoption, she argued, it makes the best out of a bad situation in which the natural parents will not or cannot bring up their own children. In the case of frozen embryos, she thought, the case is even more compelling since they face certain death after a suspended life if left in

their neglected state. "I know that a good end doesn't justify the means," she told me. "But what's wrong with the means?"

Some of the experts agree with her. "Somebody, this frozen human embryo, is going to die," says Father Joseph Howard, director of the American Bioethics Advisory Commission, a division of American Life League. "Doctors can use experimental treatment in such cases to heal. There is an ethical obligation to do what one can to save a life. It is a question of saying that the human person has dignity. This is a sufficiently grave assault on the life of this new human person to intervene to maintain that dignity, to save that life."

As Dr. Dianne Irving, a biochemical researcher, advises us: "Think of the adopting mothers. How profoundly sensitive they must be not only to the reality of the life at that early stage, but to the destruction that the embryos may undergo through illicit research. It would be a heroic act" to rescue them.

Geoffrey Surtees, a former student of May's, who fueled the ongoing debate with a 1996 response to Msgr. Smith in the pages of *Homiletic and Pastoral Review*, contends that embryo adoption has nothing at all to do with procreation. The procreative act, he maintains, has been completed in IVF, and what exists now is an early human being whose life can be saved only if he or she is taken into someone's womb.[4]

Mary Geach, an English philosopher, could not disagree more. A wife and a mother, Geach brings a personal understanding to the moral question. As Dr. May summarizes her argument, "She claims that if a woman makes her womb available to the child of strangers and allows herself to be made pregnant by means of a technical act of impregnation, she shares in the evil of in vitro fertilization . . . she ruins reproductive integrity." Geach's major point "is that by allowing herself to be made pregnant by the technician's art a woman engages in a highly defective version of the marital act."[5]

The issue is most complex. On the one hand, a woman offering her womb as the only safe and natural home for an abandoned embryo may be an eloquent witness to the true humanity and dignity of these tiny beings. She may, in fact, bring society to its senses.

On the other hand, embryo adoption, even when all the moral distinctions are made, can feed into the notion that relations between men and women are merely instrumental and that choosing pregnancy outside of marital intimacy can be a general good. It could give an altruistic gloss to in vitro fertilization and make deep-freeze labs seem like unusually ordered adoption agencies.

In my mind now is the question that nagged me all the time I was preparing this article. Would I approve of my wife "adopting" an embryo into her

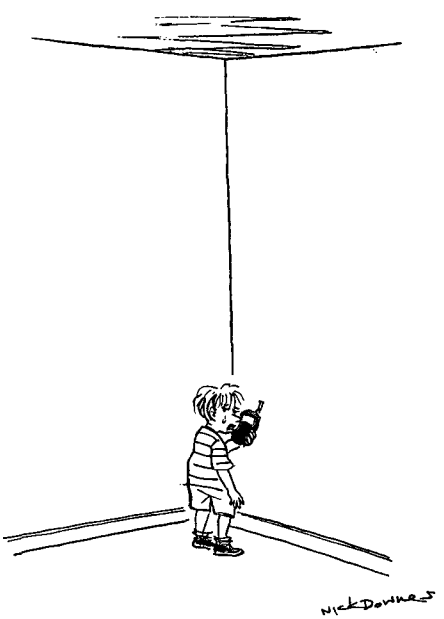
womb? My instinctive answer is, No. (Fortunately, my wife shares my view.)

To me, the choice of adopting an embryo makes a woman redefine herself in terms of something that is at the root of her being: her ability to get pregnant, bear new life, become a mother. To separate this inherent capacity from the intimacy of conjugal relations goes too far. It not only separates a wife from her husband, by interposing another impregnating party; it separates a woman from herself if she uses her womb merely as an instrument for the good end of saving a life.

As I say this, I think of those embryos in the deep freeze who could still be born into this world and hope I am not right.

NOTES

1. Couples who used the services of this agency and the children they adopted as embryos testified against embryonic stem cell research in congressional hearings in July.
2. "Catholic Bioethics and the Gift of Human Life," *Our Sunday Visitor* (Huntington, Ind.), 2000.
3. *Catholic World Report*, May 2001, p. 57.
4. Geoffrey Surtees, "Adoption of a Frozen Embryo," *Homiletic and Pastoral Review* (August-September 1996).
5. May, pp. 96, 99.



"Hello, Amnesty International?"

Preventing a Brave New World

Leon R. Kass

The urgency of the great political struggles of the twentieth century, successfully waged against totalitarianisms first right and then left, seems to have blinded many people to a deeper and ultimately darker truth about the present age: all contemporary societies are traveling briskly in the same utopian direction. All are wedded to the modern technological project; all march eagerly to the drums of progress and fly proudly the banner of modern science; all sing loudly the Baconian anthem, "Conquer nature, relieve man's estate." Leading the triumphal procession is modern medicine, which is daily becoming ever more powerful in its battle against disease, decay, and death, thanks especially to astonishing achievements in biomedical science and technology—achievements for which we must surely be grateful.

Yet contemplating present and projected advances in genetic and reproductive technologies, in neuroscience and psychopharmacology, and in the development of artificial organs and computer-chip implants for human brains, we now clearly recognize new uses for biotechnical power that soar beyond the traditional medical goals of healing disease and relieving suffering. Human nature itself lies on the operating table, ready for alteration, for eugenic and psychic "enhancement," for wholesale re-design. In leading laboratories, academic and industrial, new creators are confidently amassing their powers and quietly honing their skills, while on the street their evangelists are zealously prophesying a post-human future. For anyone who cares about preserving our humanity, the time has come to pay attention.

Some transforming powers are already here. The Pill. In vitro fertilization. Bottled embryos. Surrogate wombs. Cloning. Genetic screening. Genetic manipulation. Organ harvesting. Mechanical spare parts. Chimeras. Brain implants. Ritalin for the young, Viagra for the old, Prozac for everyone. And, to leave this vale of tears, a little extra morphine accompanied by Muzak.

Years ago Aldous Huxley saw it coming. In his charming but disturbing novel, *Brave New World* (it appeared in 1932 and is more powerful on each re-reading), he made its meaning strikingly visible for all to see. Unlike other frightening futuristic novels of the past century, such as Orwell's already

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dated *Nineteen Eighty-Four*, Huxley shows us a dystopia that goes with, rather than against, the human grain. Indeed, it is animated by our own most humane and progressive aspirations. Following those aspirations to their ultimate realization, Huxley enables us to recognize those less obvious but often more pernicious evils that are inextricably linked to the successful attainment of partial goods.

Huxley depicts human life seven centuries hence, living under the gentle hand of humanitarianism rendered fully competent by genetic manipulation, psychoactive drugs, hypnopaedia, and high-tech amusements. At long last, mankind has succeeded in eliminating disease, aggression, war, anxiety, suffering, guilt, envy, and grief. But this victory comes at the heavy price of homogenization, mediocrity, trivial pursuits, shallow attachments, debased tastes, spurious contentment, and souls without loves or longings. The Brave New World has achieved prosperity, community, stability, and nigh-universal contentment, only to be peopled by creatures of human shape but stunted humanity. They consume, fornicate, take "soma," enjoy "centrifugal bumble-puppy," and operate the machinery that makes it all possible. They do not read, write, think, love, or govern themselves. Art and science, virtue and religion, family and friendship are all passé.

What matters most is bodily health and immediate gratification: "Never put off till tomorrow the fun you can have today." Brave New Man is so dehumanized that he does not even recognize what has been lost.

Huxley's novel, of course, is science fiction. Prozac is not yet Huxley's "soma"; cloning by nuclear transfer or splitting embryos is not exactly "Bokanovskification"; MTV and virtual-reality parlors are not quite the "feelies"; and our current safe and consequenceless sexual practices are not universally as loveless or as empty as those in the novel. But the kinships are disquieting, all the more so since our technologies of bio-psycho-engineering are still in their infancy, and in ways that make all too clear what they might look like in their full maturity. Moreover, the cultural changes that technology has already wrought among us should make us even more worried than Huxley would have us be.

In Huxley's novel, everything proceeds under the direction of an omnipotent—albeit benevolent—world state. Yet the dehumanization that he portrays does not really require despotism or external control. To the contrary, precisely because the society of the future will deliver exactly what we most want—health, safety, comfort, plenty, pleasure, peace of mind and length of days—we can reach the same humanly debased condition solely on the basis of free human choice. No need for World Controllers. Just give us the technological imperative, liberal democratic society, compassionate

humanitarianism, moral pluralism, and free markets, and we can take ourselves to a Brave New World all by ourselves—and without even deliberately deciding to go. In case you had not noticed, the train has already left the station and is gathering speed, but no one seems to be in charge.

Some among us are delighted, of course, by this state of affairs: some scientists and biotechnologists, their entrepreneurial backers, and a cheering claque of sci-fi enthusiasts, futurologists, and libertarians. There are dreams to be realized, powers to be exercised, honors to be won, and money—big money—to be made. But many of us are worried, and not, as the proponents of the revolution self-servingly claim, because we are either ignorant of science or afraid of the unknown. To the contrary, we can see all too clearly where the train is headed, and we do not like the destination. We can distinguish cleverness about means from wisdom about ends, and we are loath to entrust the future of the race to those who cannot tell the difference. No friend of humanity cheers for a post-human future.

Yet for all our disquiet, we have until now done nothing to prevent it. We hide our heads in the sand because we enjoy the blessings that medicine keeps supplying, or we rationalize our inaction by declaring that human engineering is inevitable and we can do nothing about it. In either case, we are complicit in preparing for our own degradation, in some respects more to blame than the bio-zealots who, however misguided, are putting their money where their mouth is. Denial and despair, unattractive outlooks in any situation, become morally reprehensible when circumstances summon us to keep the world safe for human flourishing. Our immediate ancestors, taking up the challenge of their time, rose to the occasion and rescued the human future from the cruel dehumanizations of Nazi and Soviet tyranny. It is our more difficult task to find ways to preserve it from the soft dehumanizations of well-meaning but hubristic biotechnical "recreationism"—and to do it without undermining biomedical science or rejecting its genuine contributions to human welfare.

Truth be told, it will not be easy for us to do so, and we know it. But rising to the challenge requires recognizing the difficulties. For there are indeed many features of modern life that will conspire to frustrate efforts aimed at the human control of the biomedical project. First, we Americans believe in technological automatism: where we do not foolishly believe that all innovation is progress, we fatalistically believe that it is inevitable ("If it can be done, it will be done, like it or not"). Second, we believe in freedom: the freedom of scientists to inquire, the freedom of technologists to develop, the freedom of entrepreneurs to invest and to profit, the freedom of private

citizens to make use of existing technologies to satisfy any and all personal desires, including the desire to reproduce by whatever means. Third, the biomedical enterprise occupies the moral high ground of compassionate humanitarianism, upholding the supreme values of modern life—cure disease, prolong life, relieve suffering—in competition with which other moral goods rarely stand a chance. ("What the public wants is not to be sick," says James Watson, "and if we help them not to be sick, they'll be on our side.")

There are still other obstacles. Our cultural pluralism and easygoing relativism make it difficult to reach consensus on what we should embrace and what we should oppose; and moral objections to this or that biomedical practice are often facilely dismissed as religious or sectarian. Many people are unwilling to pronounce judgments about what is good or bad, right and wrong, even in matters of great importance, even for themselves—never mind for others or for society as a whole. It does not help that the biomedical project is now deeply entangled with commerce: there are increasingly powerful economic interests in favor of going full steam ahead, and no economic interests in favor of going slow. Since we live in a democracy, moreover, we face political difficulties in gaining a consensus to direct our future, and we have almost no political experience in trying to curtail the development of any new biomedical technology. Finally, and perhaps most troubling, our views of the meaning of our humanity have been so transformed by the scientific-technological approach to the world that we are in danger of forgetting what we have to lose, humanly speaking.

But though the difficulties are real, our situation is far from hopeless. Regarding each of the aforementioned impediments, there is another side to the story. Though we love our gadgets and believe in progress, we have lost our innocence regarding technology. The environmental movement especially has alerted us to the unintended damage caused by unregulated technological advance, and has taught us how certain dangerous practices can be curbed. Though we favor freedom of inquiry, we recognize that experiments are deeds and not speeches, and we prohibit experimentation on human subjects without their consent, even when cures from disease might be had by unfettered research; and we limit so-called reproductive freedom by proscribing incest, polygamy, and the buying and selling of babies.

Although we esteem medical progress, biomedical institutions have ethics committees that judge research proposals on moral grounds, and, when necessary, uphold the primacy of human freedom and human dignity even over scientific discovery. Our moral pluralism notwithstanding, national commissions and review bodies have sometimes reached moral consensus

to recommend limits on permissible scientific research and technological application. On the economic front, the patenting of genes and life forms and the rapid rise of genomic commerce have elicited strong concerns and criticisms, leading even former enthusiasts of the new biology to recoil from the impending commodification of human life. Though we lack political institutions experienced in setting limits on biomedical innovation, federal agencies years ago rejected the development of the plutonium-powered artificial heart, and we have nationally prohibited commercial traffic in organs for transplantation, even though a market would increase the needed supply. In recent years, several American states and many foreign countries have successfully taken political action, making certain practices illegal and placing others under moratoriums (the creation of human embryos solely for research; human germ-like genetic alteration). Most importantly, the majority of Americans are not yet so degraded or so cynical as to fail to be revolted by the society depicted in Huxley's novel. Though the obstacles to effective action are significant, they offer no excuse for resignation. Besides, it would be disgraceful to concede defeat even before we enter the fray.

Not the least of our difficulties in trying to exercise control over where biology is taking us is the fact that we do not get to decide, once and for all, for or against the destination of a post-human world. The scientific discoveries and the technical powers that will take us there come to us piecemeal, one at a time and seemingly independent from one another, each often attractively introduced as a measure that will "help [us] not to be sick." But sometimes we come to a clear fork in the road where decision is possible, and where we know that our decision will make a world of difference—indeed, it will make a permanently different world. Fortunately, we stand now at the point of such a momentous decision. Events have conspired to provide us with a perfect opportunity to seize the initiative and to gain some control of the biotechnical project. I refer to the prospect of human cloning, a practice absolutely central to Huxley's fictional world. Indeed, creating and manipulating life in the laboratory is the gateway to a Brave New World, not only in fiction but also in fact.

"To clone or not to clone a human being" is no longer a fanciful question. Success in cloning sheep, and also cows, mice, pigs, and goats, makes it perfectly clear that a fateful decision is now at hand: whether we should welcome or even tolerate the cloning of human beings. If recent newspaper reports are to be believed, reputable scientists and physicians have announced their intention to produce the first human clone in the coming year. Their efforts may already be under way.

The media, gawking and titillating as is their wont, have been softening us up for this possibility by turning the bizarre into the familiar. In the four years since the birth of Dolly the cloned sheep, the tone of discussing the prospect of human cloning has gone from "Yuck" to "Oh?" to "Gee whiz" to "Why not?" The sentimentalizers, aided by leading bioethicists, have downplayed talk about eugenically cloning the beautiful and the brawny or the best and the brightest. They have taken instead to defending clonal reproduction for humanitarian or compassionate reasons: to treat infertility in people who are said to "have no other choice," to avoid the risk of severe genetic disease, to "replace" a child who has died. For the sake of these rare benefits, they would have us countenance the entire practice of human cloning, the consequences be damned.

But we dare not be complacent about what is at issue, for the stakes are very high. Human cloning, though partly continuous with previous reproductive technologies, is also something radically new in itself and in its easily foreseeable consequences—especially when coupled with powers for genetic "enhancement" and germline genetic modification that may soon become available, owing to the recently completed Human Genome Project. I exaggerate somewhat, but in the direction of the truth: we are compelled to decide nothing less than whether human procreation is going to remain human, whether children are going to be made to order rather than begotten, and whether we wish to say yes in principle to the road that leads to the dehumanized hell of *Brave New World.*

Four years ago I addressed this subject in these pages, trying to articulate the moral grounds of our repugnance at the prospect of human cloning ("The Wisdom of Repugnance," *TNR*, June 2, 1997). Subsequent events have only strengthened my conviction that cloning is a bad idea whose time should not come; but my emphasis this time is more practical. To be sure, I would still like to persuade undecided readers that cloning is a serious evil, but I am more interested in encouraging those who oppose human cloning but who think that we are impotent to prevent it, and in mobilizing them to support new and solid legislative efforts to stop it. In addition, I want readers who may worry less about cloning and more about the impending prospects of germline genetic manipulation or other eugenic practices to realize the unique practical opportunity that now presents itself to us.

For we have here a golden opportunity to exercise some control over where biology is taking us. The technology of cloning is discrete and well defined, and it requires considerable technical know-how and dexterity; we can therefore know by name many of the likely practitioners. The public demand for cloning is extremely low, and most people are decidedly against it. Nothing

scientifically or medically important would be lost by banning clonal reproduction; alternative and non-objectionable means are available to obtain some of the most important medical benefits claimed for (non-reproductive) human cloning. The commercial interests in human cloning are, for now, quite limited; and the nations of the world are actively seeking to prevent it. Now may be as good a chance as we will ever have to get our hands on the wheel of the runaway train now headed for a post-human world and to steer it toward a more dignified human future.

II

What is cloning? Cloning, or asexual reproduction, is the production of individuals who are genetically identical to an already existing individual. The procedure's name is fancy—"somatic cell nuclear transfer"—but its concept is simple. Take a mature but unfertilized egg; remove or deactivate its nucleus; introduce a nucleus obtained from a specialized (somatic) cell of an adult organism. Once the egg begins to divide, transfer the little embryo to a woman's uterus to initiate a pregnancy. Since almost all the hereditary material of a cell is contained within its nucleus, the re-nucleated egg and the individual into which it develops are genetically identical to the organism that was the source of the transferred nucleus.

An unlimited number of genetically identical individuals—the group, as well as each of its members, is called "a clone"—could be produced by nuclear transfer. In principle, any person, male or female, newborn or adult, could be cloned, and in any quantity; and because stored cells can outlive their sources, one may even clone the dead. Since cloning requires no personal involvement on the part of the person whose genetic material is used, it could easily be used to reproduce living or deceased persons without their consent—a threat to reproductive freedom that has received relatively little attention.

Some possible misconceptions need to be avoided. Cloning is not Xeroxing: the clone of Bill Clinton, though his genetic double, would enter the world hairless, toothless, and peeing in his diapers, like any other human infant. But neither is cloning just like natural twinning: the cloned twin will be identical to an older, existing adult; and it will arise not by chance but by deliberate design; and its entire genetic makeup will be pre-selected by its parents and/or scientists. Moreover, the success rate of cloning, at least at first, will probably not be very high: the Scots transferred two hundred seventy-seven adult nuclei into sheep eggs, implanted twenty-nine clonal embryos, and 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 little immediate worry of mass-scale production of multicopies. Still, for the tens of thousands of people who sustain more than three hundred assisted-reproduction clinics in the United States and already avail themselves of in vitro fertilization and other techniques, cloning would be an option with virtually no added fuss. Panos Zavos, the Kentucky reproduction specialist who has announced his plans to clone a child, claims that he has already received thousands of e-mailed requests from people eager to clone, despite the known risks of failure and damaged offspring. Should commercial interests develop in "nucleus-banking," as they have in sperm-banking and egg-harvesting; should famous athletes or other celebrities decide to market their DNA the way they now market their autographs and nearly 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, cloning, if it is permitted, could become more than a marginal practice simply on the basis of free reproductive choice.

What are we to think about this prospect? Nothing good. Indeed, most people are repelled by nearly all aspects of human cloning: the possibility of 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 prospect of a woman bearing 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 duplicates of oneself, to be frozen away or created when needed to provide homologous tissues or organs for transplantation; the narcissism of those who would clone themselves, and the arrogance of others who think they know who deserves to be cloned; the Frankensteinian hubris to create a human life and increasingly to control its destiny; men playing at being God. Almost no one finds any of the suggested reasons for human cloning compelling, and almost everyone anticipates its possible misuses and abuses. And the popular belief that human cloning cannot be prevented makes the prospect all the more revolting.

Revulsion is not an argument; and some of yesterday's repugnances are today calmly accepted—not always for the better. In some crucial cases, however, repugnance is the emotional expression of deep wisdom, beyond reason's power completely to articulate it. Can anyone really give an argument fully adequate to the horror that is father-daughter incest (even with consent), or bestiality, or the mutilation of a corpse, or the eating of human flesh, or the rape or murder of another human being? Would anybody's failure to give full rational justification for his revulsion at those practices make

that revulsion ethically suspect?

I suggest that 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 the novelty of the undertaking, but because we intuit and we feel, immediately and without argument, the violation of things that we rightfully hold dear. We sense that cloning represents a profound defilement of our given nature as pro-creative beings, and of the social relations built on this natural ground. We also sense that cloning is a radical form of child abuse. In this age in which everything is held to be permissible so long as it is freely done, and in which our bodies are regarded as mere instruments of our autonomous rational will, 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.

III.

Yet repugnance need not stand naked before the bar of reason. The wisdom of our horror at human cloning can be at least partially articulated, even if this is finally one of those instances about which the heart has its reasons that reason cannot entirely know. I offer four objections to human cloning: that it constitutes unethical experimentation; that it threatens identity and individuality; that it turns procreation into manufacture (especially when understood as the harbinger of manipulations to come); and that it means despotism over children and perversion of parenthood. Please note: I speak only about so-called reproductive cloning, not about the creation of cloned embryos for research. The objections that may be raised against creating (or using) embryos for research are entirely independent of whether the research embryos are produced by cloning. What is radically distinct and radically new is reproductive cloning.

Any attempt to clone a human being would constitute an unethical experiment upon the resulting child-to-be. In all the animal experiments, fewer than two to three percent of all cloning attempts succeeded. Not only are there fetal deaths and stillborn infants, but many of the so-called "successes" are in fact failures. As has only recently become clear, there is a very high incidence of major disabilities and deformities in cloned animals that attain live birth. Cloned cows often have heart and lung problems; cloned mice later develop pathological obesity; other live-born cloned animals fail to reach normal developmental milestones.

The problem, scientists suggest, may lie in the fact that an egg with a new somatic nucleus must re-program itself in a matter of minutes or hours

(whereas the nucleus of an unaltered egg has been prepared over months and years). There is thus a greatly increased likelihood of error in translating the genetic instructions, leading to developmental defects some of which will show themselves only much later. (Note also that these induced abnormalities may also affect the stem cells that scientists hope to harvest from cloned embryos. Lousy embryos, lousy stem cells.) Nearly all scientists now agree that attempts to clone human beings carry massive risks of producing unhealthy, abnormal, and malformed children. What are we to do with them? Shall we just discard the ones that fall short of expectations? Considered opinion is today nearly unanimous, even among scientists: attempts at human cloning are irresponsible and unethical. We cannot ethically even get to know whether or not human cloning is feasible.

If it were successful, cloning would create serious issues of identity and individuality. The clone may experience concerns about his distinctive identity not only because he will be, in genotype and in appearance, identical to another human being, but because he may also be twin to the person who is his "father" or his "mother"—if one can still call them that. Unaccountably, people treat as innocent the homey case of intra-familial cloning—the cloning of husband or wife (or single mother). They forget about the unique dangers of mixing the twin relation with the parent-child relation. (For this situation, the relation of contemporaneous twins is no precedent; yet even this less problematic situation teaches us how difficult it is to wrest independence from the being for whom one has the most powerful affinity.) Virtually no parent is going to be able to treat a clone of himself or herself as one treats a child generated by the lottery of sex. What will happen when the adolescent clone of Mommy becomes the spitting image of the woman with whom Daddy once fell in love? In case of divorce, will Mommy still love the clone of Daddy, even though she can no longer stand the sight of Daddy himself?

Most people think about cloning from the point of view of adults choosing to clone. Almost nobody thinks about what it would be like to be a cloned child. Surely his or her new life would constantly be scrutinized in relation to that of the older version. Even in the absence of unusual parental expectations for the clone—say, to live the same life, only without its errors—the child is likely to be ever a curiosity, ever a potential source of déjà-vu. Unlike "normal" identical twins, a cloned individual—copied from whomever—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 doings in life with those of his alter ego, especially if he is a clone of someone gifted or

famous. True, his nurture and his circumstances will be different; genotype is not exactly destiny. But one must also expect parental efforts to shape this new life after the original—or at least to view the child with the original version always firmly in mind. For why else did they clone from the star basketball player, the mathematician, or the beauty queen—or even dear old Dad—in the first place?

Human cloning would also represent a giant step toward the transformation of begetting into making, of procreation into manufacture (literally, "handmade"), a process that has already begun with in vitro fertilization 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 is still according to natural processes; and the resulting children will be recognizably human. But we would be taking a major step into making man himself simply another one of the man-made things.

How does begetting differ from making? In natural procreation, human beings come together to give existence to another being that is formed exactly as we were, by what we are—living, hence perishable, hence aspiringly erotic, hence procreative human beings. But in clonal reproduction, and in the more advanced forms of manufacture to which it will lead, we give existence to a being not by what we are but by what we intend and design.

Let me be clear. The problem is not the mere intervention of technique, and the point is not that "nature knows best." The problem is that any child whose being, character, and capacities exist owing to human design does not stand on the same plane as its makers. 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. In human cloning, scientists and prospective "parents" adopt a technocratic attitude toward human children: human children become their artifacts. Such an arrangement is profoundly dehumanizing, no matter how good the product.

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 soon go into commercial orbit now that the Human Genome Project has been completed. "Human eggs for sale" is already a big business, masquerading under the pretense of "donation." Newspaper advertisements on elite college campuses offer up to $50,000 for an egg "donor" tall enough to play women's basketball and with SAT scores high enough for admission to Stanford; and to

nobody's surprise, at such prices there are many young coeds eager to help shoppers obtain the finest babies money can buy. (The egg and womb-renting entrepreneurs shamelessly proceed on the ancient, disgusting, misogynist premise that most women will give you access to their bodies, if the price is right.) Even before the capacity for human cloning is perfected, 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, the practice of human cloning by nuclear transfer—like other anticipated forms of genetically engineering the next generation—would enshrine and aggravate a profound misunderstanding of the meaning of having children and the parent-child relationship. When a couple normally chooses to procreate, the partners are saying yes to the emergence of new life in its novelty—are saying yes not only to having a child, but also to having whatever child this child turns out to be. In accepting our finitude, in opening ourselves to our replacement, we tacitly confess the limits of our control.

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, they are not our possessions. Neither are they supposed to live our lives for us, or to live anyone's life but their own. Their genetic distinctiveness and independence are the natural foreshadowing of the deep truth that they have their own, never-before-enacted life to live. Though sprung from a past, they take an uncharted course into the future.

Much mischief 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. But whereas most parents normally have hopes for their children, cloning parents will have expectations. In cloning, such overbearing parents will have taken at the start a decisive step that 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 the life that is to come. A wanted child now means a child who exists precisely to fulfill parental wants. Like all the more precise eugenic manipulations that will follow in its wake, cloning is thus inherently despotic, for it seeks to

make one's children after one's own image (or an image of one's choosing) and their future according to one's will.

Is this hyperbolic? Consider concretely the new realities of responsibility and guilt in the households of the cloned. No longer only the sins of the parents, but also the genetic choices of the parents, will be visited on the children—and beyond the third and fourth generations; and everyone will know who is responsible. No parent will be able to blame nature or the lottery of sex for an unhappy adolescent's big nose, dull wit, musical ineptitude, nervous disposition, or anything else that he hates about himself. Fairly or not, children will hold their cloners responsible for everything, for nature as well as for nurture. And parents, especially the better ones, will be limitlessly liable to guilt. Only the truly despotic souls will sleep the sleep of the innocent.

IV.

The defenders of cloning are not wittingly friends of despotism. Quite the contrary. Deaf to most other considerations, they regard themselves mainly as friends of freedom: the freedom of individuals to reproduce, the freedom of scientists and inventors to discover and to devise and to foster "progress" in genetic knowledge and technique, the freedom of entrepreneurs to profit in the market. 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 some point 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. For that reason, they argue, cloning is no big deal.

We have here a perfect example of the logic of the slippery slope. The principle of reproductive freedom currently enunciated by the proponents of cloning logically embraces the ethical acceptability of sliding all the way down: to producing children wholly in the laboratory 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, then reproductive freedom knows and accepts no limits.

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: once cloning is permitted, no one ever need discover whom one is cloning

and why). Reproductive freedom, as they understand it, is governed solely by the subjective wishes of the parents-to-be. 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. And the principle here endorsed justifies not only cloning but also the future artificial attempts to create (manufacture) "better" or "perfect" babies.

The "perfect baby," of course, is the project not of the infertility doctors, but of the eugenic scientists and their supporters, who, for the time being, are content to hide behind the skirts of the partisans of reproductive freedom and compassion for the infertile. For them, the paramount right is not the so-called right to reproduce, it is what the 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... the inalienable right to a sound heritage." But to secure this right, and to achieve 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 the child-to-be 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.

If you think that such scenarios require outside coercion or governmental tyranny, you are mistaken. Once it becomes possible, with the aid of human genomics, to produce or to select for what some regard as "better babies"—smarter, prettier, healthier, more athletic—parents will leap at the opportunity to "improve" their offspring. Indeed, not to do so will be socially regarded as a form of child neglect. Those who would ordinarily be opposed to such tinkering will be under enormous pressure to compete on behalf of their as yet unborn children—just as some now plan almost from their children's birth how to get them into Harvard. Never mind that, lacking a standard of "good" or "better," no one can really know whether any such changes will truly be improvements.

Proponents of cloning urge us to forget about the science-fiction scenarios of laboratory manufacture or multiple-copy clones, and to focus only on the sympathetic 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's making money from that practice if the practice itself is perfectly acceptable?) The so-called science-fiction cases—say *Brave New World*—make vivid the meaning of what looks to us, mistakenly, to be benign. They reveal that what

looks like compassionate humanitarianism is, in the end, crushing dehumanization.

V.

Whether or not they share my reasons, most people, I think, share my conclusion: that human cloning is unethical in itself and dangerous in its likely consequences, which include the precedent that it will establish for designing our children. Some reach this conclusion for their own good reasons, different from my own: concerns about the distributive justice in access to eugenic cloning; worries about the genetic effects of asexual "inbreeding"; aversion to the implicit premise of genetic determinism; objections to the embryonic and fetal wastage that must necessarily accompany the efforts; religious opposition to "man playing God." But never mind why: the overwhelming majority of our fellow Americans remain firmly opposed to cloning human beings.

For us, then, the real questions are: What should we do about it? How can we best succeed? These questions should concern everyone eager to secure deliberate human control over the powers that could re-design our humanity, even if cloning is not the issue over which they would choose to make their stand. And the answer to the first question seems pretty plain. What we should do is work to prevent human cloning by making it illegal.

We should aim for a global legal ban, if possible, and for a unilateral national ban at a minimum—and soon, before the fact is upon us. To be sure, legal bans can be violated; but we certainly curtail much mischief by outlawing incest, voluntary servitude, and the buying and selling of organs and babies. To be sure, renegade scientists may secretly undertake to violate such a law, but we can deter them by both criminal sanctions and monetary penalties, as well as by removing any incentive they have to proudly claim credit for their technological bravado.

Such a ban on clonal baby-making 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. It will also protect honorable scientists from a public backlash against the brazen misconduct of the rogues. As many scientists have publicly confessed, free and worthy science probably has much more to fear from a strong public reaction to a cloning fiasco than it does from a cloning ban, provided that the ban is judiciously crafted and vigorously enforced against those who would violate it.

Five states—Michigan, Louisiana, California, Rhode Island, and Virginia—have already enacted a ban on human cloning, and several others are likely

to follow suit this year. Michigan, for example, has made it a felony, punishable by imprisonment for not more than ten years or a fine of not more than $10 million, or both, to "intentionally engage in or attempt to engage in human cloning," where human cloning means "the use of human somatic cell nuclear transfer technology to produce a human embryo." Internationally, the movement to ban human cloning gains momentum. France and Germany have banned cloning (and germline genetic engineering), and the Council of Europe is working to have it banned in all of its forty-one member countries, and Canada is expected to follow suit. The United Nations, UNESCO, and the Group of Seven have called for a global ban on human cloning.

Given the decisive actions of the rest of the industrialized world, the United States looks to some observers to be a rogue nation. A few years ago, soon after the birth of Dolly, President Clinton called for legislation to outlaw human cloning, and attempts were made to produce a national ban. Yet none was enacted, despite general agreement in Congress that it would be desirable to have such a ban. One might have thought that it would be easy enough to find clear statutory language for prohibiting attempts to clone a human being (and other nations have apparently not found it difficult). But, alas, in the last national go-around, there was trouble over the apparently vague term "human being," and whether it includes the early (pre-implantation) embryonic stages of human life. Learning from this past failure, we can do better this time around. Besides, circumstances have changed greatly in the intervening three years, making a ban both more urgent and less problematic.

Two major anti-cloning bills were introduced into the Senate in 1998. The Democratic bill (Kennedy-Feinstein) would have banned so-called reproductive cloning by prohibiting transfer of cloned embryos into women to initiate pregnancy. The Republican bill (Frist-Bond) would have banned *all* cloning by prohibiting the creation even of embryonic human clones. Both sides opposed "reproductive cloning," the attempt to bring to birth a living human child who is the clone of someone now (or previously) alive. But the Democratic bill sanctioned creating cloned embryos for research purposes, and the Republican bill did not. The pro-life movement could not support the former, whereas the scientific community and the biotechnology industry opposed the latter; indeed, they successfully lobbied a dozen Republican senators to oppose taking a vote on the Republican bill (which even its supporters admit now was badly drafted). Owing to a deep and unbridgeable gulf over the question of embryo research, we did not get the congressional ban on reproductive cloning that nearly everyone wanted. It would be tragic if we again failed to produce a ban on human cloning because of its seemingly

unavoidable entanglement with the more divisive issue of embryo research.

To find a way around this impasse, several people (myself included) advocated a legislative "third way," one that firmly banned only reproductive cloning but did not legitimate creating cloned embryos for research. This, it turns out, is hard to do. It is easy enough to state the necessary negative disclaimer that would set aside the embryo-research question: "Nothing in this act shall be taken to determine the legality of creating cloned embryos for research; this act neither permits nor prohibits such activity." It is much more difficult to state the positive prohibition in terms that are unambiguous and acceptable to all sides. To indicate only one difficulty: indifference to the creation of embryonic clones coupled with a ban (only) on their transfer would place the federal government in the position of demanding the destruction of nascent life, a bitter pill to swallow even for pro-choice advocates.

Given both these difficulties, and given the imminence of attempts at human cloning, I now believe that what we need is an all-out ban on human cloning, including the creation of embryonic clones. I am convinced that all halfway measures will prove to be morally, legally, and strategically flawed, and—most important—that they will not be effective in obtaining the desired result. Anyone truly serious about preventing human reproductive cloning must seek to stop the process from the beginning. Our changed circumstances, and the now evident defects of the less restrictive alternatives, make an all-out ban by far the most attractive and effective option.

Here's why. Creating cloned human children ("reproductive cloning") necessarily begins by producing cloned human embryos. Preventing the latter would prevent the former, and prudence alone might counsel building such a "fence around the law." Yet some scientists favor embryo cloning as a way of obtaining embryos for research or as sources of cells and tissues for the possible benefit of others. (This practice they misleadingly call "therapeutic cloning" rather than the more accurate "cloning for research" or "experimental cloning," so as to obscure the fact that the clone will be "treated" only to exploitation and destruction, and that any potential future beneficiaries and any future "therapies" are at this point purely hypothetical.)

The prospect of creating new human life solely to be exploited in this way has been condemned on moral grounds by many people—including the Washington *Post*, President Clinton, and many other supporters of a woman's right to abortion—as displaying a profound disrespect for life. Even those who are willing to scavenge so-called "spare embryos"—those products of in vitro fertilization made in excess of people's reproductive needs, and otherwise likely to be discarded—draw back from creating human embryos explicitly

and solely for research purposes. They reject outright what they regard as the exploitation and the instrumentalization of nascent human life. In addition, others who are agnostic about the moral status of the embryo see the wisdom of not needlessly offending the sensibilities of their fellow citizens who are opposed to such practices.

But even setting aside these obvious moral first impressions, a few moments of reflection show why an anti-cloning law that permitted the cloning of embryos but criminalized their transfer to produce a child would be a moral blunder. This would be a law that was not merely permissively "pro-choice" but emphatically and prescriptively "anti-life." While permitting the creation of an embryonic life, it would make it a federal offense to try to keep it alive and bring it to birth. Whatever one thinks of the moral status or the ontological status of the human embryo, moral sense and practical wisdom recoil from having the government of the United States on record as requiring the destruction of nascent life and, what is worse, demanding the punishment of those who would act to preserve it by (feloniously!) giving it birth.

But the problem with the approach that targets only reproductive cloning (that is, the transfer of an embryo to the woman's uterus) is not only moral but also legal and strategic. A ban only on reproductive cloning would turn out to be unenforceable. Once cloned embryos were produced and available in laboratories and assisted-reproduction centers, it would be virtually impossible to control what was done with them. Biotechnical experiments take place in laboratories, hidden from public view, and, given the rise of high-stakes commerce in biotechnology, these experiments are concealed from the competition. Huge stockpiles of cloned human embryos could thus be produced and bought and sold without anyone knowing it. As we have seen with in vitro embryos created to treat infertility, embryos produced for one reason can be used for another reason: today "spare embryos" once created to begin a pregnancy are now used in research, and tomorrow clones created for research will be used to begin a pregnancy.

Assisted reproduction takes place within the privacy of the doctor-patient relationship, making outside scrutiny extremely difficult. Many infertility experts probably would obey the law, but others could and would defy it with impunity, their doings covered by the veil of secrecy that is the principle of medical confidentiality. Moreover, the transfer of embryos to begin a pregnancy is a simple procedure (especially compared with manufacturing the embryo in the first place), simple enough that its final steps could be self-administered by the woman, who would thus absolve the doctor of blame for having "caused" the illegal transfer. (I have in mind something analogous to

Kevorkian's suicide machine, which was designed to enable the patient to push the plunger and the good "doctor" to evade criminal liability.)

Even should the deed become known, governmental attempts to enforce the reproductive ban would run into a swarm of moral and legal challenges, both to efforts aimed at preventing transfer to a woman and—even worse—to efforts seeking to prevent birth after transfer has occurred. A woman who wished to receive the embryo clone would no doubt seek a judicial restraining order, suing to have the law overturned in the name of a constitutionally protected interest in her own reproductive choice to clone. (The cloned child would be born before the legal proceedings were complete.) And should an "illicit clonal pregnancy" be discovered, no governmental agency would compel a woman to abort the clone, and there would be an understandable storm of protest should she be fined or jailed after she gives birth. Once the baby is born, there would even be sentimental opposition to punishing the doctor for violating the law—unless, of course, the clone turned out to be severely abnormal.

For all these reasons, the only practically effective and legally sound approach is to block human cloning at the start, at the production of the embryo clone. Such a ban can be rightly characterized not as interference with reproductive freedom, nor as even interference with scientific inquiry, but as an attempt to prevent the unhealthy, unsavory, and unwelcome manufacture of and traffic in human clones.

IV.

Some scientists, pharmaceutical companies, and bio-entrepreneurs may balk at such a comprehensive restriction. They want to get their hands on those embryos, especially for their stem cells, those pluripotent cells that can in principle be turned into any cells and any tissues in the body, potentially useful for transplantation to repair somatic damage. Embryonic stem cells need not come from cloned embryos, of course; but the scientists say that stem cells obtained from clones could be therapeutically injected into the embryo's adult "twin" without any risk of immunological rejection. It is the promise of rejection-free tissues for transplantation that so far has been the most successful argument in favor of experimental cloning. Yet new discoveries have shown that we can probably obtain the same benefits without embryo cloning. The facts are much different than they were three years ago, and the weight in the debate about cloning for research should shift to reflect the facts.

Numerous recent studies have shown that it is possible to obtain highly

potent stem cells from the bodies of children and adults—from the blood, bone marrow, brain, pancreas, and, most recently, fat. Beyond all expectations, these non-embryonic stem cells have been shown to have the capacity to turn into a wide variety of specialized cells and tissues. (At the same time, early human therapeutic efforts with stem cells derived from embryos have produced some horrible results, the cells going wild in their new hosts and producing other tissues in addition to those in need of replacement. If an in vitro embryo is undetectably abnormal—as so often they are—the cells derived from it may also be abnormal.) Since cells derived from our own bodies are more easily and cheaply available than cells harvested from specially manufactured clones, we will almost surely be able to obtain from ourselves any needed homologous transplantable cells and tissues, without the need for egg donors or cloned embryonic copies of ourselves. By pouring our resources into *adult* stem cell research (or, more accurately, "non-embryonic" stem cell research), we can also avoid the morally and legally vexing issues in embryo research. And more to our present subject, by eschewing the cloning of embryos, we make the cloning of human beings much less likely.

A few weeks ago an excellent federal anti-cloning bill was introduced in Congress, sponsored by Senator Sam Brownback and Representative David Weldon. This carefully drafted legislation seeks to prevent the cloning of human beings at the very first step, by prohibiting somatic cell nuclear transfer to produce embryonic clones, and provides substantial criminal and monetary penalties for violating the law. The bill makes very clear that there is to be no interference with the scientific and medical useful practices of cloning DNA fragments (molecular cloning), with the duplication of somatic cells (or stem cells) in tissue culture (cell cloning), or with whole-organism or embryo cloning of non-human animals. If enacted, this law would bring the United States into line with the current or soon-to-be-enacted practices of many other nations. Most important, it offers us the best chance—the only realistic chance—that we have to keep human cloning from happening, or from happening much.

Getting this bill passed will not be easy. The pharmaceutical and biotech companies and some scientific and patient-advocacy associations may claim that the bill is the work of bio-Luddites: anti-science, a threat to free inquiry, an obstacle to obtaining urgently needed therapies for disease. Some feminists and pro-choice groups will claim that this legislation is really only a sneaky device for fighting *Roe* v. *Wade,* and they will resist anything that might be taken even to hint that a human embryo has any worth. On the other

side, some right-to-life purists, who care not how babies are made as long as life will not be destroyed, will withhold their support because the bill does not take a position against embryo twinning or embryo research in general.

All of these arguments are wrong, and all of them must be resisted. This is not an issue of pro-life versus pro-choice. It is not about death and destruction, or about a woman's right to choose. It is only and emphatically about baby design and manufacture: the opening skirmish of a long battle against eugenics and against a post-human future. As such, it is an issue that should not divide "the left" and "the right"; and there are people across the political spectrum who are coalescing in the efforts to stop human cloning. (The prime sponsor of Michigan's comprehensive anti-cloning law is a pro-choice Democratic legislator.) Everyone needs to understand that, whatever we may think about the moral status of embryos, once embryonic clones are produced in the laboratories the eugenic revolution will have begun. And we shall have lost our best chance to do anything about it.

As we argue in the coming weeks about this legislation, let us be clear about the urgency of our situation and the meaning of our action and inaction. Scientists and doctors whose names we know, and probably many others whose names we do not know, are today working to clone human beings. They are aware of the immediate hazards, but they are undeterred. They are prepared to screen and to destroy anything that looks abnormal. They do not care that they will not be able to detect most of the possible defects. So confident are they in their rectitude that they are willing to ignore all future consequences of the power to clone human beings. They are prepared to gamble with the well-being of any live-born clones, and, if I am right, with a great deal more, all for the glory of being the first to replicate a human being. They are, in short, daring the community to defy them. In these circumstances, our silence can only mean acquiescence. To do nothing now is to accept the responsibility for the deed and for all that follows predictably in its wake.

I appreciate that a federal legislative ban on human cloning is without American precedent, at least in matters technological. Perhaps such a ban will prove ineffective; perhaps it will eventually be shown to have been a mistake. (If so, it could be reversed.) If enacted, however, it will have achieved one overwhelmingly important result, in addition to its contribution to thwarting cloning: it will place the burden of practical proof where it belongs. It will require the proponents to show very clearly what great social or medical good can be had only by the cloning of human beings. Surely it is only for such a compelling case, yet to be made or even imagined, that we should wish to

risk this major departure—or any other major departure—in human procreation.

Americans have lived by and prospered under a rosy optimism about scientific and technological progress. The technological imperative has probably served us well, though we should admit that there is no accurate method for weighing benefits and harms. And even when we recognize the unwelcome outcomes of technological advance, we remain confident in our ability to fix all the "bad" consequences—by regulation or by means of still newer and better technologies. Yet there is very good reason for shifting the American paradigm, at least regarding those technological interventions into the human body and mind that would surely effect fundamental (and likely irreversible) changes in human nature, basic human relationships, and what it means to be a human being. Here we should not be willing to risk everything in the naïve hope that, should things go wrong, we can later set them right again.

Some have argued that cloning is almost certainly going to remain a marginal practice, and that we should therefore permit people to practice it. Such a view is shortsighted. Even if cloning is rarely undertaken, a society in which it is tolerated is no longer the same society—any more than is a society that permits (even small-scale) incest or cannibalism or slavery. A society that allows cloning, whether it knows it or not, has tacitly assented to the conversion of procreation into manufacture and to the treatment of children as purely the projects of our will. Willy-nilly, it has acquiesced in the eugenic re-design of future generations. The humanitarian superhighway to a Brave New World lies open before this society.

But the present danger posed by human cloning is, paradoxically, also a golden opportunity. In a truly unprecedented way, we can strike a blow for the human control of the technological project, for wisdom, for prudence, for human dignity. The prospect of human cloning, so repulsive to contemplate, is the occasion for deciding whether we shall be slaves of unregulated innovation, and ultimately its artifacts, or whether we shall remain free human beings who guide our powers toward the enhancement of human dignity. The humanity of the human future is now in our hands.

Politics Trumps Science

Wesley J. Smith

It is becoming increasingly clear that the public is not being given the straight scoop in the great embryonic stem-cell debate. This unfortunate reality was illustrated by some very welcome, if unexpected, reporting by the *Washington Post* last Friday. It turns out that an important stem-cell study had language removed at the last minute designed to lessen the political impact of research that casts a potential shadow over the future of embryonic stem cell medicine.

The *Science* article in question reported that mice cloned from embryonic stem cells were genetically defective. This is important news considering the current effort in Congress to ban all human cloning. But the report is also relevant to the debate over whether to federally fund embryonic stem-cell research (ESCR). If human embryonic stem cells are also genetically unstable, that could materially compromise efforts to transform cells extracted from embryos into successful human medical therapies.

According to the *Post*, here's where politics came in: Up until a few days before the report was published, the authors "called for research" to see if the "genetic instability" of embryonic stem cells might "limit their use in clinical application." But at the last minute, that part of the article was deleted—*not* because of the science but the politics. Indeed, the *Post* story quotes the lead researcher explaining that the language was removed because the researchers were afraid that any mention of the potential problem would be misconstrued and exploited by opponents of ESCR.

The *Post*'s expose of how politics skewed the study's reported conclusions follows fast on the heels of a telling indictment of the media by the Statistical Assessment Service (STATS), a nonpartisan group dedicated to truth telling in political debates that involve science. STATS's "Stemming the News Flow?" demonstrated that the *Washington Post*'s excellent reporting cited above was something of an anomaly. Rather than journalists telling the truth, the whole truth, and nothing but the truth about the great stem-cell debate, STATS discovered that stories extolling the potential of embryonic stem cells have been generally played to the sound of brass bands while research breakthroughs involving adult or alternate sources have often been little reported or completely ignored.

One of several examples given by STATS was the general "silence" about an important finding published in the prestigious scientific journal *Cell* that "offered the strongest evidence to date that the adult body harbors stem cells that are as

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flexible as embryonic stem cells." This is a crucial issue. One of the main arguments made by those who extol embryonic research over adult and alternatives is the claim that only embryonic stem cells have the needed flexibility to permit optimal use in cell medical therapies. Yet, when a prestigious scientific journal reported that stem cells found in bone marrow exhibited flexibility akin to that of their embryonic counterparts, so quiet were the mainstream media that you could hear the sound of crickets chirping. While the *Cell* story was featured in Reuters and on the AP it made barely a ripple in the major media organs or the national television news.

Another indication of the politics at play in the great debate occurred last week. Apparently Tommy Thompson, the Secretary of Health and Human Services, ordered a National Institutes of Health (NIH) study comparing embryonic versus adult stem-cell research to assist President Bush in his decision-making about federal funding. Before it reached the president, however, it was leaked to the *New York Times*—a strident advocate of federal funding of ESCR and an implacable Bush administration foe. This permitted supporters of embryonic funding to spin the story so as to emphasize the potential wonders of embryonic research over the alternatives.

Still, despite these and other obfuscating efforts, it is increasingly clear that the longer President Bush ponders the issue the stronger the case against federally funding ESCR becomes. To make the right decision, Bush need only heed the advice of the National Bioethics Advisory Commission (NBAC), which initially recommended to President Clinton that the feds fund ESCR. But the NBAC recommendation included an important caveat that has generally been ignored by politicians and in the media: Recognizing that human embryos are destroyed when stem cells are extracted NBAC stated that ESCR is "*justifiable only if no less morally problematic alternatives are available for advancing the research . . .*"

It now appears quite clear that morally *unproblematic* alternatives do exist and are indeed readily available to advance the research. Since the NBAC issued its recommendation, tremendous and exciting breakthroughs in adult and other non-embryonic cell research have been reported almost on a daily basis, dramatically altering the scientific field. The following is only a very partial list of these recent exciting scientific advances:

◦ Stem cells have been extracted from cadaver brains capable of being transformed into different kinds of brain and neuron cells offering tremendous hope for future treatment of diseases such as Parkinson's and Alzheimer's;

◦ Researchers in Italy discovered a "molecular switch" that tells immature brain cells to become fully developed neurons. The scientists hope to be able to create treatments in which doctors would extract a small number of brain stem cells from patients, let them multiply in the laboratory, and then transplant them into the brain where they would form neurons to cure brain or nerve diseases or injuries.

◦ Adult mouse pancreatic stem cells were injected into diabetic mice and achieved full insulin production allowing the animals to live.

• Umbilical cord blood stem cells have fully restored the immune systems of several children suffering from cancer.

• White blood cells implanted into a young woman's severed spinal cord helped restore bladder control and some leg movements, offering great hope for the effective treatment of paraplegia and quadriplegia.

• Researchers in Singapore transformed human bone marrow cells into heart muscle.

• The scientists who cloned Dolly the sheep made heart muscle out of cow skin.

• Human fat may be a fecund source of stem cells that are capable of becoming muscle, bone, or cartilage.

At the same time, embryonic/fetal therapies have had decidedly mixed results. True, some animal studies have demonstrated promise. In one report, old rats performed better on a memory test after scientists injected brain cells from aborted fetuses into the senile rodents' brains. Embryonic mouse stem cells injected into diabetic mice produced low levels of insulin—but unlike the adult stem cell experiment mentioned above, the mice in the embryonic stem cell experiment all died. (The STATS report noted that this embryonic stem cell success was played big in the media but that the more promising adult stem cell triumph went virtually unreported.) The NIH study leaked to the *New York Times* reportedly extolled embryonic cells as having an unlimited ability to proliferate. However, this trait might also be the embryonic cells' Achilles heel: there is a danger that such proliferation could cause tumors. Press descriptions of the leaked NIH study also assert that in unpublished reports, embryonic cells stimulated the production of dopamine in mice: the degeneration of dopamine-making neurons is the cause of Parkinson's disease.

There has also been much bad news on the embryonic/fetal front. An article in the May 1996 *Neurology*, described a tragic experiment in which fetal cells were injected into a Parkinson's disease patient's brain. The patient later died because of the growth of cartilage and bone tissue and hair *in the man's brain* that may have been caused by the injection of early gestational cells.

More recently, patients who were experimentally treated with fetal cells for their Parkinson's suffered permanent nightmarish side effects, including uncontrollable movements. "They chew constantly, their fingers go up and down, their wrists flex and distend," one disappointed experimenter told the *New York Times*.

Because of the political filtering of the information being reported to the general public, if you asked the average man and woman on the street about stem cells they probably would say, "Embryo cells miraculous; adult/alternatives, not worth very much." But it is quite clear that this is not the case. Indeed, it is becoming increasingly likely that embryonic stem cells have been oversold to a public eager for cures to some of our most devastating diseases, at the expense of full and fair reporting about the many uncontroversial alternatives.

There is no question that President Bush should liberally fund stem-cell research. But he should follow the advice of NBAC and restrict federal financial

support to adult and alternative therapies since these present reasonable and viable alternatives to the use of embryonic stem cells which tens of millions of Americans find morally objectionable both because they destroy living human embryos and treat human life as a crop ripe for the harvest.

Yes, such a course would ignite a media and political firestorm. But then, most profiles in courage do.

Blowing Smoke on Stem-Cell Research

There is an old saying among trial lawyers that goes something like this: "If you can't argue the facts, argue the law, if you can't argue the facts or the law, blow smoke." This proverb is equally applicable to political arguments. In the Great Stem-Cell Debate the smoke blown by proponents of federal funding for embryonic-stem-cell research (ESCR) has grown so thick that global-warming activists should sound the alarm.

Up until now, those who advocate federal funding for ESCR have driven the debate. This isn't surprising given the blatantly biased coverage by the mainstream media as exposed by the Statistical Assessment Service (STATS), which I described in a previous NRO piece. But now, opponents of federal funding are beginning to hope that time may actually be on their side. Indeed, the longer President Bush ponders what to do, the clearer the air is becoming.

The following are the primary arguments in favor of federal funding. What once appeared to be con crete pillars supporting a compelling argument haveturned out to be constructed out of wispy particulate matter that may be beginning to collapse.

Only IVF Embryos Would Be Targeted For Destruction: The American people are deeply pragmatic. Thus, the most potent argument in favor of federal funding has been the promise that only embryos destined for destruction from IVF fertility experiments would be used in federally funded research. Opponents' response to this argument—that no law requires these embryos to be destroyed, that some might be ultimately adopted by infertile couples, that such attitudes lead directly to the slippery slope, etc—while certainly true, have not persuaded a public that seems to view the use of unneeded IVF embryos as being akin to recycling aluminum cans.

But a story has now exploded into the news that should shatter this popular complacency. Scientists at the Jones Institute for Reproductive Medicine in Norfolk, Virginia bragged in a press release that they paid women between $1,500 and $2,000 apiece for their eggs, and then used them—with the egg providers' consent—to create embryos for the purpose of destroying them in ESCR. These scientists claim that making embryos for research is "as ethical" as using frozen IVF embryos. Moreover, they contend, freshly created embryos might be "superior" for research purposes to those thawed out of a deep freeze. If that is true, how long

would scientists be content to use "in excess of need" IVF embryos?

The response of pro-ESCR scientists and bioethicists to this development has been especially telling. Rather than forcefully and unequivocally condemning Jones Institute, their primary complaint has been that the "timing could not have been worse"—meaning that the disclosure makes a bad appearance that could give President Bush grounds to refuse federal funding. There has been no reported outcry from the ESCR crowd that the creating human embryos solely for the purpose of destroying them in research is immoral.

With this breaking story, it is now clear that the IVF boundary would never hold. Instead, federally funding ESCR would merely free up private dollars, now used for IVF research, to fund the kind of activities undertaken by the Jones Institute. Moreover, we must not forget that the biotech industry is lobbying hard against the Weldon Bill—crucial legislation that would ban all human cloning—on the basis that cloning would be a necessary aspect of embryonic-stem-cell medicine should the research ever become clinically viable. Thus, all of this talk of restricting the research to IVF embryos is really nothing but the old bait and switch.

Embryos Would Not Really Be Destroyed in the Research: Some advocates of federal funding who are queasy at the thought of destroying embryos have settled their uneasy tummies by changing the scientific definitions. Thus, the Washington *Times*'s Suzanne Fields wrote, "Though these fertilized eggs are popularly referred to as embryos, they really aren't, not until implanted in a uterine wall. They are more precisely blastocysts."

Fields may be a good writer but she clearly doesn't know her human biology. An embryo by any other name is still an embryo. The 1989 edition of the American Medical Association's Encyclopedia of Medicine explicitly states, "From the time of conception until the eighth week, the developing baby is known as an embryo." In its earliest stage of life the embryo is known as a zygote. The embryo is called a blastocyst when it reaches the stage of development where it can implant into the womb. At this point the embryo may be made up of more than a hundred cells encased in an embryonic lining. This is the stage of the embryos that are destroyed when their stem cells are harvested.

Along these same lines, Senator Orrin Hatch, former Senator Connie Mack, and other ESCR supporters who self-identify as pro-life, have taken to asserting that life doesn't really begin until actual implantation in the mother's womb, thereby seeking to hold on to a thin thread of consistency with their previous anti-abortion advocacy. (Hatch put it rather indelicately, stating, "Life begins in the womb, not a refrigerator.")

The idea that life begins in the mother and not a petri dish may reflect a metaphysical belief system to which these anti-abortion politicians are surely entitled. But it isn't biology. Biologically, an individual human life commences as soon as sperm merges with egg. At that point, its entire genetic makeup of a human individual has been determined. The rest is simply a matter of time and development.

Only Embryonic Stem Cells Offer the Full Promise of Medical Breakthroughs: For years, the propaganda coming from ESCR supporters has claimed that only embryos offer the potential for the full range of cures that scientists hope to develop with stem-cell research. Happily, amazing breakthroughs using alternative stem cell sources—umbilical cord blood, organs, fat, etc.—have dramatically altered the playing field. Indeed, terrible human maladies have already been healed using stem cells found in umbilical cord blood. Moreover, a recent scientific journal report stated that stem cells found in bone marrow might be as flexible as embryonic cells. Thus, scientists may be able to obtain virtually all of the medical benefits that ESCR advocates hope to achieve using alternative cell therapies without our society having to accept a Faustian bargain in which medical advances are paid for at the cost of human lives commodified into a crop, ripe for the harvest.

The Stem-Cell Issue is the Latest Chapter in the Pro-Life versus Pro-Choice Debate: The media has played the Great Stem-Cell Debate as merely another front in our country's never-ending cultural struggle over abortion. But it isn't. The point of legalized abortion—whether or not one accepts the premise—is that the law should not force a woman to use her body for gestation and giving birth against her will. But in ESCR, there is no woman being forced to do anything. Thus abortion is utterly irrelevant.

In the Great Stem-Cell Debate our nation confronts a crucial question that cannot be finessed or compromised. Indeed, it is an ultimate issue: does human life have inherent value simply because it is human? If so, then federally funding ESCR would be wrong because, in effect, it would, place the people's seal of approval on destroying life for the utilitarian purpose of harvesting its valuable parts. If not, if we have no inherent value different from that of other life on the planet, then what's all the fuss about?

Perhaps this is why the issue sears our collective consciousness with such burning intensity. In the end, the denouement of the Great Stem-Cell Debate may not be about embryos at all, but about the meaning and purpose of human life.

Thank God for Cloning

Bait and switch has been one of the primary tactics of the Brave New Worlders who see some forms of human life as merely an exploitable and profitable natural resource, ripe for the harvest. But before they can begin reaping what they hope to sow, they must first push past the reluctance of the American people to permit human life to be commodified and objectified. That's where embryonic-stem-cell research (ESCR) comes in.

In order to get the American people to step off the ethical cliff, advocates all but promise a miraculous tomorrow in which people with Parkinson's disease, Lou Gehrig's disease, quadriplegia, and most of the other maladies that afflict humankind take the embryonic-stem-cell cure. Never mind that adult and alternative

sources of stem cells offer similar potential without the ethical and moral price. All that stands between sick people and renewed health, we are told repeatedly, is the Dickey Amendment that currently bans federal funding of destructive research on embryos.

To get around the problem, proponents of ESCR convinced former President Clinton to implement a very clever Clintonesque maneuver: The government would circumvent the legal proscription by "only" funding research on embryonic stem cells that had already been destroyed using private funds. As an added inducement, the Clinton regulations would restrict federal funding to stem cells taken from embryos that were already doomed for the trash being in excess of need after IVF fertility treatments.

This argument resonated deeply with the populace — and most especially the media — by appealing to the deep pragmatism in the American character. If these blastocysts — no larger than the period at the end of this sentence, as the pro-ESCR advocacy slogan goes — are to be destroyed anyway, why not help Christopher Reeve, Mary Tyler Moore and Michael J. Fox find cures for their respective maladies?

But a funny thing happened on the way to the federal funding of ESCR. Human cloning reared its ugly head as the House of Representatives voted in a strong bipartisan fashion to outlaw both "reproductive" and "therapeutic" cloning. The angry reaction of scientists and media types to the House vote demonstrated that many of those pushing ESCR have no intention whatsoever of limiting themselves to dissecting IVF embryos.

In truth, there is no difference between reproductive and therapeutic cloning. There is only cloning. The distinction is actually about what is done with the cloned human life after it is manufactured. If it is researched upon and destroyed, that is called therapeutic cloning — as if it does the clone any good. If it is implanted and brought to birth, that is called reproductive cloning. And herein lies the second great bait and switch being perpetrated by the Brave New Worlders upon the American people.

Yes, they say loudly, we should ban reproductive cloning, for now. (No sacrifice there. The science isn't advanced enough to permit a human clone to be born.) But *banning* therapeutic cloning, well (huff, puff) *that* would be anti-science; *that* will drive our best and brightest researchers out of the country to where they can pursue their research unhindered by religious fanatics! As the August 2, 2001 editorial in the *Los Angeles Times* opined more calmly, federal law should "bar scientists from cloning embryos to create a child while still allowing them to transfer DNA into an egg to, for example, create pancreatic cells that won't be rejected after being put into a diabetic's body."

Finally, the jig is up! What the cloning debate has finally smoked out, as the *Times* editorialists admit using typically obscure language, is that human cloning is a necessary adjunct to ESCR. That means embryonic-stem-cell research would not be limited to IVF embryos. No indeed. Scientists will have to clone embryos in

the same way ranchers breed cattle or fish farmers breed salmon if the research is to be applied in clinical medicine.

Proof of this long-intentionally-obscured truth is found in the stock market's reaction to the anti-cloning triumph in the House. If IVF were the only embryos targeted in ESCR, a ban on cloning shouldn't matter. But capitalists have a funny way of allowing their investments to speak the unvarnished truth. Euphemistic arguments, bait and switch tactics, claims that embryos out of a womb aren't really embryos in order to gain political cover, don't matter a Canadian penny with the investor class. All that counts is whether money will be made or lost.

And now, the Money has spoken. In the wake of the House vote, the stock values of biotech corporations involved in ESCR plunged: Geron Corp of Menlo Park, California fell 8 percent in the wake of the House vote. Aastrom Biosciences Inc., of Ann Arbor, Michigan, fell 5 percent. StemCells Inc. stock fell a whopping 16 percent.

When asked why the sell off, a stock analyst told Reuters a simple truth: "The perception in the market is that the climate in the U.S. is not conducive to these companies to be successful." In other words, human cloning will be required for ESCR to be profitable.

But the American people overwhelmingly oppose human cloning. So, herein lies a great opportunity. Opponents of federally funding ESCR must quickly and forcefully exploit the opening created by the House vote and adhere human cloning Super Glue-like to embryonic-stem-cell research in the public's consciousness. This should be followed up with an energetic and repeated emphasis on the many research breakthroughs occurring on almost a daily basis with adult stem cells. (For example, ignored in the mainstream media, the July 19, 2001 *Harvard University Gazette* reported that adult stem cells affected a "permanent reversal" of Type 1 diabetes in mice. The adult cells regenerated organs destroyed by scientists in order to eradicate the disease. (Hello, Mary Tyler Moore! Are you listening?) Such an approach would be both intellectually honest and a potentially winning end-game strategy.

So, let President Bush continue to ponder deeply. Well he should. Given sufficient time, truth will win out, paving the way for a truly beneficent medical future in which we get the benefits of stem-cell therapy without the need to sacrifice and objectify human life.

Cells, Fetuses, and Logic

Ramesh Ponnuru

Who is being sentimental,
who rational, in this debate?

Americans' attitudes toward abortion are notoriously muddled. But it is safe to say that they tend to dislike pro-lifers more than pro-choicers, even when they themselves favor curbs on abortion. Pro-lifers have a suspect, a frightening, passion. They are agitators; they are religious zealots. Pro-choicers, on the other hand, are the party of reason. They see all the pitfalls of prohibiting abortion. They understand that abortion raises issues much more complex than sentimental slogans about "protecting unborn babies" can capture.

This is, I think, a widespread view about the combatants in the abortion wars. It is also close to 180 degrees from the truth. Sentiment has been the pro-choicers' ally more often than not. The pro-life position, on the other hand, must ultimately be rooted in rigorous logic. A pro-life position that is merely sentimental is a weak and unsustainable thing—as demonstrated, most recently, in the controversy over embryonic stem-cell research.

Pro-choicers can depend more reliably on sentiment than pro-lifers for the simple reason that distressed pregnant women elicit more sympathy than endangered fetuses. Nobody remembers being a fetus. Nobody has held a fetus's hand. But many women know what it is like to be pregnant under difficult circumstances, or can easily imagine it. All of us, men and women alike, have known or can imagine a woman we care about in that situation: a sister, a friend. The fetus has almost no emotional claim on us. It—we think of the young fetus as an "it," not a "he" or "she," although of course every fetus has a chromosomally determined sex—is an abstraction to us, usually nameless.

Smart people have attempted to found moral theory on natural sentiments: One thinks of no less a figure than Adam Smith. But these attempts are doomed. Untutored sentiment is a poor guide to morality. No profound knowledge of history or psychology is necessary to see that our sympathy often fails to recognize the legitimate moral claims of those we do not know or of those we do not look like. Tender feelings alone cannot lead us to grasp the requirements of decency or justice. It takes abstract reasoning to tell us, first, that the fetus is a living human being, and then to follow that premise to the eventual conclusion that abortion is a violation of human rights.

To say that the pro-life position is rooted in abstract logic is not, of course, to deny that its adherents possess strong emotions about the matter, or even that their emotions are stronger than those of pro-choicers. As Richard Brookhiser has

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remarked in this connection, thoughts, if they are taken seriously, do not lie idly on the mind's table. They lead to further thoughts, and emotions and sensibilities form around them like crystals.

Nor do I mean to suggest that pro-lifers never make non-rational appeals. Many pro-choicers find the pro-life movement's rhetoric about "babies" manipulative. Fetuses aren't babies, they say. But pro-lifers don't really hold the views they hold because they think fetuses are babies; rather, they know that fetuses are members of the human race. (Fifteen-year-olds, 31-year-olds, and 62-year-olds aren't babies, either, but nobody thinks it's okay to kill them.) The campaign against partial-birth abortion is an attempt by pro-lifers to win support from Americans in the "mushy middle" by stressing the grisliness of some abortions. But pro-lifers took up that campaign as a tactic, not because they really believe one method of abortion is worse than another.

For pro-choicers, however, an appeal to sentiment is frequently not merely a tactic or a bit of loose rhetoric but the entirety of the argument. Katha Pollitt, *The Nation*'s engaging feminist columnist, jeers at pro-lifers for fretting about the fate of clusters of cells smaller than a fingernail. But surely size cannot be our criterion for determining when rights should be protected.

If the appeal of sentiment has been powerful in the debate over abortion, it has been irresistible in the one over embryonic stem cells. Research using these cells may yield cures or treatments for Parkinson's disease, Alzheimer's, and other ailments. But the extraction of the cells, and thus the research, requires the destruction of embryos. A recent cover story on stem cells in Newsweek was typical of press coverage in following the usual script of pro-life religious fanatics vs. science. But this is in fact a conflict in which the average person's emotional reaction is almost completely one-sided. On the one hand, people—movie stars, relatives of congressmen and journalists, your next-door neighbor—with terrible diseases. On the other hand, what looks like a clump of cells in some lab.

Indeed, the pro-abortion writer Anna Quindlen has advocated stem-cell research on the precise grounds that it would make people even more emotionally inclined to dismiss concerns about abortion: "[S]ome who believe that life begins at conception may look into the vacant eyes of an adored parent with Alzheimer's or picture a paralyzed child walking again, and take a closer look at what an embryo really is." Quindlen would have us judge difficult moral questions by taking a look and forming a picture—by acts of dumb perception rather than of intellection. This is not surprising coming from a woman whose nonfiction oeuvre practically constitutes a sustained implicit brief against the application of logic to social controversies.

More surprising, perhaps, is that many people who are usually pro-life have adopted this way of thinking, or rather not thinking, to justify embryonic stem-cell research. Here is Republican senator Orrin Hatch speaking to the New York *Times*: "I just cannot equate a child living in the womb, with moving toes and fingers and a beating heart, with an embryo in a freezer." He has made similar comments

elsewhere, with particular emphasis on the womb/freezer distinction and the embryo's lack of visibly human characteristics. But surely neither temperature nor location is morally decisive. Nobody would question whether a twelve-year-old who had been conceived in a lab was a human being entitled to full rights as such.

Wall Street Journal editor Robert Bartley, who while not a pro-lifer himself is a frequent ally of pro-lifers, has made a similar argument for embryonic stem-cell research. Using the term for a six-day-old embryo, he writes, "I would find a funeral service for a blastocyst grotesque." Most miscarriages do not occasion funerals either, but presumably Bartley would not deny that what miscarriages end are tiny human lives. Blastocysts may not look like human beings at first glance. But on reflection, they look exactly like human beings—exactly like human beings at that stage of development; exactly like all of us once looked. (Not that stem-cell research and miscarriages raise the same moral issues. Michael Kinsley remarks in *Time* that since pro-lifers are not exercised about the thousands of miscarriages that happen every year—a "mass slaughter of embryos"—they shouldn't oppose the destruction of a few embryos for medical research. This is a miscarriage of logic. The elderly die in large numbers every year, too, but that doesn't mean it's okay to extract organs they need to survive for research purposes.)

One virtue of the pro-life position is its clarity. Life begins at conception, and taking human life can be allowed under only the strictest of circumstances. Pro-choicers have a much harder time drawing a line past which life is unambiguously protected. Their views of when life begins generally fall into one of three categories: 1) The fetus, like Schrodinger's cat, exists in a kind of suspended state of life/non-life until the mother decides what she wants; 2) there is some continuum in which a fetus that is not a human life gradually becomes one; or 3) we don't really need to think about this obscure theological mystery. (Oddly enough, in the philosophical literature on abortion it is more common to see pro-choicers speculating on when "ensoulment" might occur than to see pro-lifers pondering the question.) In practice, they appear to draw the line at birth. At least their most powerful contingent, the judges, do.

A pro-life position not rooted in logic ends up having the same line-drawing problem. When do pro-life supporters of stem-cell research believe life begins? They would seem to believe that a clump of matter that is not a person somehow becomes inhabited by a person as it develops. Rather than defend this theoretical disaster bordering on superstition, some of these pro-lifers have resorted to the name games that pro-choicers have used in the past: Blastocysts aren't embryos, embryos that have not been implanted are pre-embryos, etc. But none of these nominal distinctions—nor the biological distinctions they denote—mark a point of moral distinction.

Bartley describes himself as a member of the "mushy middle" on abortion as though it were good in itself not to draw principled distinctions. He opposes partial-birth abortion because it is ugly, supports stem-cell research because

nobody grieves for blastocysts, seeks a middle ground because the extremists are off-putting: a clump of positions united only by sensibility.

The trouble with this middle ground is that, in addition to giving up territory that should be defended, it is itself indefensible territory. Slippery slopes are slippery because the logic that starts you down them will lead you further down. During the stem-cell debate, people have said that it's okay to use embryos for research because we already "discard" plenty of embryos as a byproduct of in vitro fertilization; they could with equal validity say that we should allow research on five-month-old fetuses because we allow them to be aborted. Judges have said that we have to allow partial-birth abortion, or even euthanasia, because we allow abortion. The Washington Post says that the logic of abortion rights does not permit the law to charge people with murder when they kill an unborn child in the course of an assault on a pregnant woman, even if the woman considers it murder.

Slippery-slope arguments rarely succeed because people discount the possibility of remote future horrors; they think they will be able to stop the slide. But horrors can get less horrible as the future becomes less remote. People adjust their sensibilities. In 1973, not even pro-abortion lawyers were challenging Texas's law against partial-birth abortion. Back then, embryo-killing research would have seemed monstrous. I have read the argument (in Reason, the libertarian magazine, as it happens) that people predicted all kinds of dire consequences from in vitro fertilization that did not happen, so why not allow cloning? One of the dire consequences of in vitro fertilization, however, is precisely that we are debating cloning now.

A common trope of the press coverage of the stem-cell conflict—which reeks of weariness at the continued existence of pro-lifers—is that it's a shame this "scientific issue" has gotten caught up in the "politics" of abortion. But it is caught up in the issue because the premises of the arguments are the same: Either conception results in a new human being deserving of legal protection or it doesn't. No amount of sophisticated hairsplitting over bioethics is going to work if it ignores that awkward, obvious question.

Only Human

Andrew Sullivan

In one of the creepiest scenarios in Steven Spielberg and Stanley Kubrick's new movie *A.I.*, there is something called a Flesh Fair. In this sci-fi fantasy, human beings have developed technology so refined that they can create mechanical humans that appear almost as real as organic ones. These "mechas" are essentially a slave class: They perform chores, replace lost children, even have their body parts distributed for various uses. At Flesh Fairs, mechas are displayed and killed for amusement, their body parts sometimes traded and reused. They are humans entirely as means—not ends. And, of course, they're not truly human at all. They're robots simulating humans. But even robots, Spielberg and Kubrick seem to suggest, merit some dignity.

If robots deserve dignity, shouldn't blastocysts? In thinking about stem-cell research, the image of the Flesh Fair still resonates. In *A.I.* humans use pseudo-humans for sport; they chop them up, dissect them, then throw them away. When we watch the movie, we naturally recoil. But when we read essentially the same story in the newspapers—about events happening now—we manage to keep calm.

Is the analogy a stretch? Supporters of stem-cell research say blastocysts are not human beings. Or, even if they are human, they are not beings. They are no more human than, say, a clipped fingernail (which contains all the DNA information for an entire person, just as accurately as a blastocyst). Clearly, however, the fingernail comparison misses something important. A fingernail would not become a mature human being if implanted in a womb. The real question is whether this distinction amounts to a moral difference.

One criterion to distinguish a real human being—with rights and dignity—from an embryo or a fingernail might be viability. The blastocyst, while clearly the same species as the rest of us, cannot survive independent of scientific paraphernalia, a freezer, or a womb. Hence it's not a human being—and can morally be experimented on. That's a clear line—but it opens up a host of other possibilities. If "viability" independent of a mother or others is the criterion, why shouldn't the physically incapacitated or the very old be consigned to medical experimentation? Why not those in comas or on life support? If they're going to die anyway and have no ability to fend for themselves, what's the point of wasting their bodies when they could yield valuable medical insights? Yes, we could wait till they're dead—but they're far more useful to science alive.

Other criteria might be the ability to feel pain, think rationally, or be self-conscious. Since an embryo (so far as we know) can do none of these things, it's fair

Andrew Sullivan is a senior edtior of *The New Republic* magazine in which this article first appeared (July 30).

game. But again, these criteria make others who are similarly limited—such as those with Alzheimer's, or the paraplegic, or the insane—equal grist for the scientific mill. This is especially the case with those whose mental capacity renders them unable to give meaningful consent. Why ask at all if, like embryos, such pseudo-humans cannot say yes or no? Perhaps some people might even give their consent in advance for such work. For ethical purposes, these people could be protected from physical pain during experimentation until their death.

Supporters of stem-cell research won't go that far. Except that they already have. What, after all, makes a human being a human being? Scientists would say a human is defined by its DNA—the genetic coding that makes our species different from any others. Stem-cell research enthusiasts say we are defined by our DNA *and* our stage of development. They say a blastocyst is so unformed that it cannot be equated with a fetus, let alone with an adult. But it remains a fact—indeed one of the marvels of creation—that the embryo contains exactly the same amount of genetic information as you or I do. We aren't different from it in kind, only different in degree: in age, size, weight, gender, and on and on. In fact, in some sense, a blastocyst is the purest form of human being—genderless, indistinguishable to the naked eye from any other, unencumbered with the accoutrements of society and experience—and yet as unique as any human being who has ever lived or ever will. To extinguish it is surely not to extinguish something other than us. It is to extinguish us.

Consider these analogies. Federal law makes it a crime to kill or injure a bald eagle. It is also a crime to kill or injure a bald eagle's egg. We recognize that to kill one is the same as to kill the other. Similarly, I cannot remember the last time an apple farmer responded to an early frost by saying, "Never mind, we lost the fertilized blossom, but the apples will be fine." Of course, the apples won't be fine. Once the blossom is dead, the apples will never arrive. And once a blastocyst is killed, the human being coiled inexorably inside is no more. If that isn't killing, what is? And why are we more coherent when it comes to eagles than when it comes to humans?

Some may say that nature itself allows many blastocysts to die. What else are miscarriages? It is true that such tragedies happen all the time. But just because earthquakes happen doesn't mean massacres are justified. And our intuitive moral response to a woman who has had a miscarriage is not the same as our response to a woman who has had a haircut or even to a woman who has lost a limb. One might conceivably justify allowing extra blastocysts to be created and lost as collateral damage in an artificial insemination (although, the more I think about this, the less defensible it seems). But to turn around and use those extra blastocysts for experimentation is a completely separate step. It is to treat human life purely instrumentally. I know of no better description of evil.

Such evil cannot be morally counterbalanced by any good that medical breakthroughs might bring. This is especially true when it's possible to cultivate stem cells from other sources. Perhaps those sources are not as fecund as embryos—but

that means we are confronted not by a trade-off between *any* research into stem cells and preserving human life, but between better, faster stem-cell research and human life. Under those conditions, it's not that close a call. After all, are we currently beset by the problem of scientific breakthroughs that aren't fast enough? Surely the opposite is true (or at least *also* true): We are beset by scientific breakthroughs that are occurring far faster than we have the moral language or the experience to deal with. Is a slight deceleration in that research too high a price to pay for removing even the chance that we may be taking human life?

I'm not dismissing the real pain of those dying of terminal illnesses who might conceivably be saved by this research—or the pain of their families. We should indeed do all we can to end and abate any and all disease. I write as someone with a deeply vested interest in such research. But life should be measured not by how long it is lived but by how it is lived. If my life were extended one day at the expense of one other human's life itself, it would be an evil beyond measure. Some things cannot be simply bargained or rationalized away. And one of those things is surely life itself.

President Reagan Would Have Opposed ESCR

Cal Thomas

Advocates for embryonic stem cell research are pulling out all the stops, hoping President Bush will approve federal funding.

A really big gun was brought out last week when former first lady Nancy Reagan joined two Reagan administration aides—Michael Deaver and Ken Duberstein—in communicating to the president their support for such research.

Nancy Reagan's voice should be heard, given the grace and strength she has shown in taking care of her husband in sickness and in health. But there's one voice that trumps all the rest—that of Ronald Reagan himself. That voice has been absent from the public square since the former president developed Alzheimer's disease, yet he has spoken of the value of human life and the need to protect it at all stages.

President Reagan wrote a compelling and simple defense of human life in a 1983 essay for *Human Life Review*. That essay was turned into a book with concurring opinions by then-Surgeon General Dr. C. Everett Koop, and the late British writer Malcolm Muggeridge.

In his essay, "Abortion and the Conscience of the Nation," Reagan succinctly and powerfully made his case for the defense of human life, regardless of status or condition. In his skillful and simple way that once resonated with so many people, Reagan wrote: ". . . anyone who doesn't feel sure whether we are talking about a second human life should clearly give life the benefit of the doubt. If you don't know whether a body is alive or dead, you would never bury it. I think this consideration itself should be enough for all of us to insist on protecting the unborn."

Then Reagan cut to the heart of this continuing and wrenching debate: "The real question today is not when human life begins, but, *What is the value of human life?* . . . The real question for (the baby) and for all of us is whether that tiny human life has a God-given right to be protected by the law—the same right we have."

The July 23 issue of *Time* magazine trumpets its belief that "apes became human" and "made an evolutionary leap." If that's true and we're all the product of evolutionary accident, why stop with embryonic stem cell research? Let's experiment on blacks, the retarded, the handicapped and homosexuals—all of whom some elites in the past have not judged as fully human. Let's apologize to the descendants of those Nazi doctors who were simply ahead of their time.

In a *Time* essay in the same issue, Charles Krauthammer (who was trained as a medical doctor) says we should proceed with embryonic stem cell research, but "federal regulation should be strict and unbending." He wants to ban human cloning and thinks Congress should make it a crime. He wants to outlaw the creation of

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Cal Thomas is a syndicated columnist. The above was published on July 20 and is reprinted with permission.

embryos solely for the purpose of harvesting. He would allow stem cell research "only" on discarded fertility clinic embryos or those from "fetal cadavers" (translation: aborted babies who can be killed up to the moment of birth).

What moral, ethical or philosophical reason is there for such an approach? Krauthammer gives none. The next step on this slippery slope will not be governed by an immutable moral code but by opinion polls, shaped by scientists who will want to do more simply because they've discovered they can.

Krauthammer tries to redeem the point he has ceded by claiming that we "owe posterity a moral universe not trampled and corrupted by arrogant, brilliant science." We long ago gave up that universe and have settled in a foreign land. The protective fence that surrounded even agnostics in past centuries was rooted in the principles of the Ten Commandments and the philosophy and instructions of the Beatitudes. But we aborted those principles and now we abort ourselves.

Soon, with no controlling moral authority, we will euthanize the elderly and the handicapped. At each stage, we will be consoled that we are doing good. We will have long forgotten the words of Ronald Reagan, as we have forgotten the words of the prophet Isaiah: "Woe to them who call evil good."

Hard Cell

Richard Miniter

When President Bush meets the pope today, one of the issues they're sure to discuss is the controversy over embryonic stem-cell research. Mr. Bush is reportedly struggling with the decision of whether to accept a last-minute Clinton decision that would effectively lift the ban on federal funding of such research. During his campaign, Mr. Bush promised to uphold the ban.

Proponents of such research, and the media, frame the issue as one of religion vs. science, arguing that if the president keeps his promise, he will set back new medical advances and sacrifice potential cures for diseases like Parkinson's.

But science isn't on their side, and Mr. Bush doesn't have to choose between convictions and cures. While federal funding for embryo research is banned, the research itself is not. The private sector lavishly funds research on stem cells drawn from both embryos and adults. Yet research on embryonic stem cells is no more developed than the embryos themselves—while research on adult stem cells is close to delivering miraculous treatments.

Consider these recent advances:

◦ Surgeons in Taiwan restored vision to patients with severe eye damage by using stem cells from the patients' own eyes. Their vision improved from 20/112 to 20/45, according to results published in the *New England Journal of Medicine.*

◦ British scientists found that adult stem cells in bone marrow can turn into liver tissue, a first step toward developing new treatments for liver damage. Their work was reported in the journal *Nature.*

◦ Two recent studies show that adult stem cells in bone marrow transplanted into the brain of mice can develop into neurons and have been reprogrammed into healthy brain cells in lab rats. Previous research had shown this transformation was possible in cultured cells, but these studies, one of which was published in the journal *Science*, show it can happen in living animals.

◦ Scientists found that adult stem cells in bone marrow injected into a damaged mouse heart could become functional heart muscle cells, and that these new cells partially restored the heart's pumping ability. One of the scientists predicted that after successful follow-up studies, human clinical trials could start in three years. The results were published in *Nature.*

These findings were all reported within the past year. And they are only a few examples of the breathtaking medical breakthroughs occurring after years of research on adult stem cells—stroke victims' brains repaired with adult stem cells becoming fully functional neurons connecting with existing brain cells, new cartilage grown to repair damaged knees.

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We are on the verge of astounding human applications using adult stem cells. Embryonic stem cells, by contrast, have yet to save a single life.

Stem cells are unspecialized cells that have the ability to transform themselves, in varying degrees, into many other types of cells. Thus a single stem cell could become a skin cell, a hair cell, a liver cell and so on. All of us were once stem cells, and our bodies still hold many forms of these cells.

It appears that every organ and tissue in the body has undifferentiated stem cells. These cells may exist to repair organs when they are traumatized or damaged, but scientists are still puzzled by how they work and what exactly they are supposed to do. If scientists can improve this natural repair process with adult stem cells, people may be able to grow new livers from stem cells extracted from their own liver. Another source of adult stem cells is body fat. And umbilical cords provide a large supply of stem cells—without political or moral controversy.

A National Institutes of Health report, released just in time for last week's congressional hearings, argues that stem cells from embryos are better. But on closer examination, the evidence is shaky and speculative, while the unique drawbacks of embryo stem cells are becoming clearer.

The case for the superiority of embryo stem cells rests on three pillars: They are easier to harvest, there are more stem cells in embryos than in adults, and they can be more easily changed into every organ and tissue in the body.

The first two claims are misleading. Harvesting is a nonproblem. Scientists have been extracting some types of human adult stem cells for almost a decade, while human embryo stem cells weren't successfully isolated until 1998. Several biotech companies have developed proprietary methods to make adult-cell isolation and extraction even easier. "We've been here in the background while all the noise was going on, and there's been a pressure on us to provide a solution," John Wong, CEO of MorphoGen Pharmaceuticals, told *BioWorld Today* last August. "We believe we've provided that solution. The technology has just moved beyond stem cells from embryonic tissue."

While it's true that embryos have a higher ratio of stem to nonstem cells, that doesn't mean much. Scientists have discovered stem cells in adults in virtually every major organ, including the brain and body, and researchers last year identified conditions that would allow for the multiplication of adult stem cells in culture by a billion-fold in a few weeks.

The real argument for using stem cells from embryos is they are more "plastic"—that is, they are easier to change into other types of cells. This is a hard claim to evaluate because, as last week's NIH report notes, "the field of stem-cell biology is advancing at an incredible pace with new discoveries being reported in the scientific literature on a weekly basis." Any distinguishing advantage from using embryo stem cells today may already have been overtaken by a lab that is waiting for its results to be published.

Indeed, scientists have already proved adept at turning adult stem cells into a

variety of seemingly unrelated cells. Jonas Frisen, a scientist working at NeuroNova AB, a Stockholm-based biotech firm, published some exciting work in one of the world's leading scientific journals, *Science*, in June 2000. "We have demonstrated that the potency of these [adult stem] cells was far greater than expected and what seemed to be a fairly restricted cell type can give rise to many different types of cells. These recent findings may turn some previous concepts upside down," Dr. Frisen said in a press release. Already, *human* adult stem cells have been transformed into cartilage, muscle, bone, cardiac tissues, neural cells, liver tissues and blood vessels. Research with animal adult stem cells indicate the ability to transform them into kidney, heart, lung, intestine and nervous-system tissues.

While adult stem cells may never be as completely "plastic" as embryo stem cells they will almost certainly be plastic enough for all practical applications. "These adult tissues don't appear to be as restricted in their fate as we thought they were," Dennis Steindler, a professor of neuroscience and neurosurgery at the University of Tennessee-Memphis, told *Blood Weekly* magazine in May. "In some ways they may not have the same potential as embryonic cells, but once we figure out their molecular genetics, we should be able to coax them into becoming almost anything we want them to be."

Diane Krause of the Yale School of Medicine—a supporter of embryonic stem-cell research—says she was "surprised" by her own research on adult stem cells. "It went against our dogma," Dr. Krause says. Stem cells found in the liver were believed to be limited to making liver tissue, stem cells in the skin more skin and so on. "But at least for stem cells found in bone marrow, that is not true." Scientists, who previously underestimated the potential of adult stem cells, are "searching for a new paradigm," she adds.

What's more, new research suggests that embryonic stem cells may be a little *too* plastic. "The emerging truth in the lab is that pluripotent [embryonic] stem cells are hard to rein in," University of Pennsylvania bioethicist Glenn McGee told MIT's *Technology Review*. "The potential that they would explode into a cancerous mass after a stem-cell transplant might turn out to be the Pandora's box of stem-cell research." In a recent *Weekly Standard* article, author Wesley J. Smith, who opposes embryonic stem-cell research on moral grounds, cites a chilling report from China in a study in the May 1996 edition of *Neurology*, the official journal of the American Academy of Neurology, in which implanted embryonic and fetal stem cells became bone, skin and hair cells—inside a test subject's brain. He died.

Then there is the problem of rejection. Transplant patients know that they must take antirejection drugs for years and, in some cases, for life. New tissues developed from embryonic stem cells may require a long-term regimen of drugs to suppress the body's immune system. These drugs have side effects, and a suppressed immune systems can increase the risk of infection. This is not a problem of adult stem cells because they can be drawn from the patient's own body.

Adult stem cells appear to be easier to control than embryonic cells, are closer

to commercial application, and have a history of proven benefits—including bone-marrow applications.

It's easier to transform, say, a pancreatic adult stem cell into pancreatic tissue than to turn an embryonic stem cell into pancreatic tissue. "It is inherently a shorter biological step to make a beta cell from a duct [adult stem] cell than it is from other possible cells, such as embryonic stem cells," according to the *British Medical Journal*. Human adult pancreatic stem cells have already been grown in culture and differentiated into insulin-producing cells.

Adult stem cells are also being used in human clinical trials and applications to treat multiple sclerosis, leukemia, liver disease, cardiac damage, brain tumors, ovarian cancer, breast cancer, arthritis, lupus and other conditions. French physicians used a patient's own adult muscle stem cells to treat heart disease, with promising results.

Little wonder, then, that the private sector is focusing almost exclusively on adult stem-cell research. Of the 15 U.S. biotech companies solely devoted to developing cures using stem cells, only two focus on embryos. "While the embryonic cells are rumored to have broad potential, so far only adult stem cells have demonstrated wide uses," writes Scott Gottlieb, a physician and staff writer for the *British Medical Journal*, in *The American Spectator*.

In the race to cure Parkinson's disease, cancer and other age-old scourges, the private sector is more than a few laps ahead. And perhaps a dozen private-sector projects are within a few years of human trials. StemCells Inc. is using adult stem-cell research to develop methods for regenerating damaged central nervous systems and restoring function to kidneys and livers. Baltimore-based Osiris Therapeutic Inc. has already developed technology for isolating adult stem cells, found adult stem cells in the body's connective tissues and conducted a clinical trial of adult stem-cell infusion for breast cancer patients who'd had chemotherapy. "The practical use of adult stem cells is not 10- to 15 years away but well along in the commercialization process," Osiris president James Burns told *Transplant News* in March 1999. "We believe that adult stem cells will become a routine treatment for cancer, immune disorders, orthopedic injuries, transplant medicine, congestive heart failure and degenerative diseases."

By contrast embryo stem-cell research is at the drawing-board stage—not for lack of funds but for lack of promising research to finance. Venture capitalists have no agenda beyond making money; if they see embryo projects that are likely to bear fruit over the next five to seven years—the usual VC time horizon—they will fund them.

That the market is speaking so loudly against embryo stem-cell research probably explains why embryo researchers are so eager to reverse the ban on government funding. But medical science will continue to advance even if Mr. Bush keeps his word.

Whatever the president decides, though, the NIH should put more funds into adult stem-cell research. That would give the most promising research a big push—and isn't that what's most important?

The Sordid Isolation of Great Britain

Daniel Johnson

George W. Bush's visit to John Paul II this week was not a summit, but a pilgrimage. Perhaps "Castelgandolfo" will enter history, as "Canossa" did a thousand years ago. Just as the Emperor Henry IV submitted to Pope Gregory VII, so the President deferred to the Pope, the temporal lord to the spiritual. For half an hour, the most powerful person in the world looked like the junior partner of the man he addressed, quite sincerely, as "Holy Father." Mr. Bush recognised the fact that, though the Pope has no divisions, the modern world is ruled not by armies but by words.

Did they talk about peace? Poverty? Pollution? No: the subject that weighed most heavily on their consciences was stem-cell research. President Bush is agonising about whether to keep his campaign pledge to deny federal funds for experiments which involve the creation, "harvesting" and destruction of embryos. Such research includes "therapeutic" human cloning, from which scientists promise to create human "spare parts" and to cure degenerative diseases, but which the Pope condemns as an "evil" comparable to euthanasia and infanticide. So sensitive is this issue in the United States that it could set the tone for the entire Bush presidency. As I write, Congress looks likely to pass a Bill to ban the creation of embryos by cloning. Mr. Bush is said to support the Bill.

In recent months, several distinguished American visitors have impressed me with the emphasis they place upon bioethical issues. George Weigel, the biographer of John Paul II, told me that the absurd faith vested in genetic research is a phenomenon of secularised religion, with its promise of "miracle cures," the deification of the scientist, and the indefinite postponement of death. "This is the immortality project," he said. This conviction is shared by American Jews as well as Catholics. Irving Kristol and Gertrude Himmelfarb, the founders and leading voices of neo-conservatism, told me that they see this field as "the politics of the future."

It is a measure of how seriously the President takes "the culture of life" that he has even adopted the idiom of the Pope whose "profound" views he respects even when they disagree. Indeed, Mr. Bush makes a point of visiting Catholic prelates wherever he travels in the United States. Yet the President, remember, is not a Catholic, but an evangelical Methodist.

Tony Blair, by contrast, is an Anglican, perhaps even—as his biographer John Sopel suggests—a crypto-Catholic. Yet it is almost inconceivable that the Prime Minister would have made such a pilgrimage to sit at the feet of an octogenarian pope—especially one of John Paul II's uncompromising orthodoxy—to listen to his warnings against stem cell research. Mr. Blair is just not interested in anything

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that a supreme pontiff might have to say about the mass destruction of human embryos. Mr. Blair does not even realise that he has just given the green light to the genetic modification of Homo sapiens.

Britain is the first country in the world explicitly to legalise the "therapeutic" cloning of human embryos, just as we were among the first to legalise abortion. This momentous step was not even accorded the dignity of an Act of Parliament, but was smuggled through as an amendment to a statutory instrument, without proper debate. Having rammed it through the Commons last December and the Lords in January, Mr. Blair was quite indifferent to the dismay it provoked throughout Europe and America. While the British media took their cue from the government's pretence that this was a mere clarification of the law, the rest of the world rightly saw this small step for genetics as a giant leap towards the dehumanising of mankind.

While most British newspapers relegated the story to the inside pages, it dominated the front page of Germany's heavyweight broadsheet, the *Frankfurter Allgemeine Zeitung*. Britain was widely accused of excluding herself from European civilisation. Reaction in the United States was no less vehement; and, in France, President Chirac immediately assured his countrymen that France would not follow Britain's lead and called for an international ban on all human cloning; last month the French government proposed a ban on human cloning "for research purposes." Even the Dutch, who have legalised euthanasia, have no plans to follow Britain's example.

Of course, there were those who approved. Severino Antinori, the maverick Italian professor who has promised to clone human babies for infertile couples, was among those who praised to the skies "Tony Blair's intelligent decision."

Those respectable scientists who have already cloned animals, and who know the terrible abnormalities it is almost certain to engender in the few cloned foetuses that do not spontaneously abort, agree with the leading American expert Professor Rudolf Jaenisch in condemning human cloning as "an outrageous criminal enterprise to even attempt." The British Human Fertilisation and Embryology Authority joined in the chorus, but Professor Antinori is correct in supposing that the Prime Minister's advocacy of therapeutic cloning has helped to legitimise reproductive cloning.

Mr. Blair, in short, is a bioethical Little Englander. He divorces his Christian beliefs from his actions and subordinates moral imperatives to political or economic ones. This is his most considered attempt to justify therapeutic cloning, in a speech to the European Bioscience Conference last November: "Our conviction about what is natural or right should not inhibit the role of science in discovering the truth; rather it should inform our judgment about the implications and consequences of the truth science uncovers. We should also realise that there are areas where even in exercising such judgment, there is more than one morally acceptable outcome."

What this appears to mean is that morality must not be permitted to "inhibit" research; that there are no moral absolutes; and that it is acceptable to treat unborn life as a means to an end. For Mr. Blair that end is not primarily the ethical one of alleviating human suffering—though even this could not justify the cannibalistic dismemberment of the unborn for the sake of adults. It is the political and economic one of keeping "Britain at the forefront of world science." The use of a racing metaphor to justify a form of human sacrifice indicates moral idiocy. This is what the Pope had in mind in his warning to President Bush: "Experience is already showing how a tragic coarsening of consciences accompanies the assault on innocent human life in the womb."

When Mr. Blair was asked by Roger Highfield, the *Daily Telegraph*'s science editor, whether the Blairs would be prepared to donate their own embryos for stem cell research, he declined "to get into this very personal question." He was not, in other words, prepared to apply his policies to himself.

The British treat bioethics as a matter of taste. There is an unspoken agreement among senior politicians in this country to exclude anything that smacks of American pro-life versus pro-choice politics. Though it is among the commonest operations performed by the NHS, abortion is never treated as a normal political issue. If it were, the strong correlation between abortion and breast cancer might have received a proper airing. The same fastidiousness applies to abortifacient drugs, such as the "morning after" pill, which the government has now made available to teenagers over the counter without proper warnings about the health risks.

Likewise, the creation of hundreds of thousands of embryos purely for experimentation since the Human Fertilisation and Embryology Act 1990 has scarcely figured in public consciousness. There has been no cost-benefit analysis of the scientific case that swayed the Warnock committee in favour of permitting embryo research. Such an analysis would have revealed that there have been few, if any, medical advances as a result of a decade of such experiments, let alone practical benefits for patients. IVF, the one (heavily qualified) success story, could have been permitted without giving researchers carte blanche to treat embryos as a disposable means to a dubious end. But the absence of public debate saved boffins and bigwigs from the embarrassment of a proper audit.

And so, when the issues of embryonic stem cell research and cloning surfaced in the late 1990s, most politicians again accepted uncritically the claims made by scientists, many of them representing large commercial interests. Cures were promised for everything from Alzheimer's to Parkinson's; the onus was placed on those who opposed such research to justify "denying" new treatments to desperately ill patients.

The British, as usual, paid heed not to mad scientists but to bad scientists. Never mind the fact that "spare body parts" can be grown from adult stem cells and that cells taken from the umbilical cord share many embryonic features, or that stem cells are plentifully available from other adult tissue including liposuctioned fat

(what one U.S. commentator drily called "our nation's most plentiful resource").

Never mind the fact that embryonic stem cells appear far less suitable for the kind of purposes scientists are seeking, as they are notoriously unstable—"hard to rein in," as one American bioethicist puts it.

Never mind the fact that in America (unlike Britain) the scientific consensus in favour of adult stem cell research and against unreliable embryonic cell research is so clear that the former attracts ample private investment, whereas embryo research is obliged to seek federal funds.

Never mind the fact that the inevitable consequence of legalising "therapeutic" cloning was that some scientists would be emboldened to press on with "reproductive" cloning.

So the British political, medical and pharmaceutical establishments presented a united front to the public. The only dissenting voice came from the Churches and other faiths. The Archbishops of Canterbury and York, the Cardinal Archbishops of Westminster and Glasgow, Evangelicals and Baptists, Free Church and Greek Orthodox spokesmen, the Chief Rabbi, leaders of the Muslims and Sikhs all requested a meeting with the Prime Minister. Any one of these clerics would have been granted access to the Bush White House without delay. But the united representatives of Britain's multi-faith, multi-ethnic, multi-cultural society were snubbed no fewer than four times by Mr. Blair. In the end, they addressed an open letter to the House of Lords, pleading merely for time to reflect, only to be snubbed again, this time by the government whips, who worked overtime to ensure that the legislation should not be impeded by a mere "free vote."

Meanwhile, in Germany, "intellectual civil war" has raged for the past few months. Chancellor Gerhard Schroeder has appointed a permanent commission of experts to advise him on bioethical issues, and he seems to be impressed by Mr. Blair's refusal to allow moral objections to "inhibit" scientific progress. But public opinion in Germany is still deeply suspicious of anything that reminds them of a master race.

That, according to the Oxford philosopher Professor Sir Michael Dummett, is one of the strongest objections to cloning: the creation of a Western elite, genetically perfected, which could lord it over the rest of humanity. Chancellor Schroeder's guru, Juergen Habermas, has asked for scientists to treat the embryo as if it were looking over one's shoulder: could one justify one's research to the victim?

Most Germans understand that what was wrong with Nazi eugenics was not simply its cruelty; it was treating the individual as a means to a collective end. Americans, many of whom fled from the Nazis, grasp this too. So do most Continental Europeans, whether Catholic or Protestant. Only in Britain do politicians suppose that it is "utilitarian" to sacrifice the individual for some notional social end—though only the vulgarisers of Bentham and Mill ever taught this. Any utilitarian calculus would reveal that the risks of eugenics far outweigh the benefits. Can it be right that, to satisfy the primaeval urge of a self-selected

elite to see their genes perpetuated, the entire natural order should be inverted?

And so the British—despite their instinctive revulsion for human cloning—acquiesce in our sordid isolation. We are indeed leading the world; leading it in an unheard-of abdication of responsibility, the hubris of inhumanity. The nation of Burke has trampled underfoot the unwritten contract between the living and the unborn. The present generation has no right to instrumentalise the next, merely in order to prolong its own longevity. The selfish gene has become a selfish genie, now too late to rebottle. Britain is the laboratory in which posterity is sacrificed for the illusion of immortality.

"Edward descends from a long line of human pharmaceutical research subjects."

Cloning, Stem Cells, and Beyond

Eric Cohen and William Kristol

Last week's vote in the House to ban human cloning is something to celebrate. It may even be something momentous. The House passed, by 265 to 162, a bill sponsored by representative Dave Weldon of Florida that would ban the creation of all human clones. It rejected an alternative sponsored by Pennsylvania representative James Greenwood, and backed by the biotech lobby, that would have allowed the creation of cloned human embryos to be used for medical research and then destroyed.

The Greenwood forces had corporate money and much of enlightened opinion behind them. They over-promised, misled, and demagogued, claiming, for example, that cloned-embryo research could one day "end human suffering," that cloned embryos "are not really embryos at all," and that a vote against such research is a "sentence of death for millions of Americans."

But the majority of the House—a larger majority than expected—refused to listen. They chose instead to halt (or try to halt) what Charles Krauthammer has described as "the most ghoulish and dangerous enterprise in modern scientific history: the creation of nascent cloned human life for the sole purpose of its exploitation and destruction." They defied the wishes of the medical research establishment, the biotech industry, and the health-at-any-cost humanitarians. They drew a bright moral line, which even the most well-meaning scientists would not be permitted to cross.

Whether this line will hold in the long run—and even whether the Senate will pass a similar cloning ban—is an open question. For while last week's House vote struck a blow against a Brave New World, it represents only the first public engagement in what will surely be a prolonged struggle, not just over cloning and stem cells, but over whether and how to regulate, control, and shape the genetic revolution that is upon us.

One lesson of last week's debate is that everyone claims to be horrified by the prospect of live human clones. Even the Greenwood bill ostensibly banned reproductive cloning. This suggests a broad willingness to accept some moral limitations, enforced in law, on scientific "progress." It suggests we still believe there are great and obvious evils that no amount of utilitarian or libertarian reasoning can justify, and which we must regulate, forbid, and criminalize in the public interest.

But we have also learned something else: Over one-third of the House of Representatives believes that corporations and researchers—like Advanced Cell Technology in Worcester, Massachusetts, which has already begun a research cloning

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project—should be left alone in the hope that cloned-embryo farms will one day prove a useful source of embryonic stem cells. And we know that majorities in both the House and Senate support federal funding for embryonic stem cell research, at least when the embryos are "leftovers" from in vitro fertilization clinics. Nor have we seen any urgent effort to ban the creation of embryos by private organizations—like the Jones Institute in Norfolk, Virginia, discussed in these pages two weeks ago—that pay women to help produce embryos for research and destruction.

And despite all the publicity surrounding the president's pending decision on embryonic stem cells, it is worth noting that his decision will be a limited one, touching only on the question of federal funding of research on stem cell lines derived from spare in vitro embryos. Even if the president maintains the current ban on funding, Congress will challenge him with a bill of its own—and may well try to broaden the permissible uses of federal funds. And whatever the president and Congress decide about federal funding, this research will presumably proceed apace in the private sector—and not just on leftover in vitro embryos but on embryos created solely for research and destruction.

All of this means that last week's cloning debate in the House and President Bush's imminent stem cell decision are just the tip of the iceberg. The dilemmas over cloning and stem cells will inevitably force a much larger debate about where the modern technological project is heading: Is it moral to harvest potential lives to help existing ones? How about improving potential life through genetic engineering? Isn't the question of how stem cells may be used as morally troubling as the question of how they have been obtained? How reasonable is it, anyway, to try to end all disease and suffering? Do we have the wisdom and the will to preserve a distinction between medical therapy and eugenic enhancement? A line between a better human world and a new inhuman one?

In this opening skirmish—call it "the cloning/stem cell moment"—four basic positions have emerged. Each represents a different set of moral, political, and practical judgments about what is fundamentally desirable and what is not, and about whether even seemingly desirable advances may have very undesirable consequences. We might call the four camps the hubristic scientists, the squishy liberals, the anguished moderates, and the anti-Brave New Worlders.

Hubristic Scientists

The hubristic scientists favor medical progress at all costs, and are willing to use any means necessary to further unfettered research, which they equate with the good of mankind. To defend this position they deploy a number of strategies, not all of them true or consistent: the claim that mere legislators and uninformed citizens lack the expertise to make decisions about science; the claim that any "metaphysical" arguments for restricting science are unconstitutional transgressions against the separation of church and state; the assertion that because science is limited ("a method, not a faith," as biotech lobbyist Carl Feldbaum put it),

religious people should not worry about its excesses; that because human beings are "more than our genetic make-ups," we should allow the geneticists to do what they deem necessary with the human genome; that nearly all religious people really want the fruits of the biological enterprise, even if their values initially give them pause; that the spirit of religion and the spirit of science are really the same; and, finally, the insistence that things are not what they seem—or more precisely in this particular debate, that embryos are not embryos and that the Weldon ban on human cloning is really an effort to undermine in vitro fertilization, the right to abortion, and indeed decades and centuries of medical progress.

Greenwood and his allies used all these strategies on the House floor:

"This is Congress again playing scientist," said Louise M. Slaughter, Democrat of New York.

"Now, here we are making a decision like we were the house of cardinals on a religious issue when, in fact, scientists are struggling to find out how human beings actually work," said Jim McDermott, Democrat of Washington.

"I am not prepared as a politician to stand on the floor of the House and say, I have a philosophical belief, probably stemmed in my religion, that makes me say, you cannot go there, science, because it violates my religious belief," said James Greenwood, Republican of Pennsylvania.

And Greenwood again, this time claiming to have God on his side: "It is a very legitimate and important and historic debate about how it is that we are able to use the DNA that God put into our own bodies, use the brain that God gave us to think creatively, and to employ this research to save the lives of men, women, and children in this country and throughout the world and to rescue them from terribly debilitating and life-shortening diseases."

Conspicuous on the House floor was contempt for so-called theocrats who would stop the compassionate march of medical progress—together with brazen confidence that God wants science to proceed unregulated. It was altogether an odd mixture of the hubris of the medical researcher seeking to lead his fellow men beyond nature, and the sentimentality of the post-Communist romantic, who sees in genetic science man's new hope for building a kind, just, and liberated heaven on earth. If the House debate is any indication, the path from such hubris and sentimentality to what C.S. Lewis called "the abolition of man" is quick and direct.

Squishy Liberals

The second position is that of the squishy liberals, best exemplified perhaps by the *Washington Post*. In October 1994, a National Institutes of Health panel of experts recommended that the government fund research that involved creating and destroying human embryos for research purposes alone. The *Post* disagreed, in a sharp editorial that called for "drawing the line." "The creation of human embryos specifically for research that will destroy them is unconscionable," the paper wrote. "The government has no business funding it. . . . It is not necessary to

be against abortion rights, or to believe human life literally begins at conception, to be deeply alarmed by the notion of scientists' purposely causing conceptions in a context entirely divorced from even the potential of reproduction."

Fast forward to last week. On the day of the cloning debate, a *Post* editorial entitled "Cloning Overkill" sang a very different tune. All the caution and outrage and commitment to "society's ability to make distinctions" were gone. Now swept up in enthusiasm for stem cell research, the *Post* argued:

"The bill to ban all human cloning, proposed by Rep. David Weldon (R-Fla.), goes well beyond any consensus society has yet reached. . . . At issue is not the withholding of federal funding from research some find morally troubling; rather, the Weldon bill would criminalize the field of cloning entirely. . . . A complete cloning ban could block many possible clinical applications of stem cell research." And the only way those "applications" will be discovered is by creating cloned human embryos for research and destruction—the very thing the paper seven years earlier had deemed "unconscionable."

This is the way of the squishy liberals: They temporarily affirm some moral limits to scientific progress, only to cave when those limits are actually tested by a new wave of medical promises. They are putty in the hands of the less scrupulous avatars of "progress," who use the rhetoric of limits as a tactic against those who would resist them.

Thus, in the media crusade to win federal funding for embryonic stem cell research, advocates have made their case largely on the grounds that embryos left over from in vitro fertilization will be destroyed anyway. But the House vote shows that many pro-research congressmen are willing to go much further: 178 members (153 of them Democrats) voted to authorize the creation and destruction of cloned embryos.

Here the bait-and-switch dishonesty is remarkable. On July 27, over 200 members of the House wrote President Bush "to express our strong support for federal funding of embryonic stem cell research." The letter continues:

"The reports the week of July 9 that a Virginia laboratory has created human embryos to obtain stem cells for research purposes and a Massachusetts firm aims to create embryos using cloning techniques to derive stem cells for therapeutic purposes, make plain that this research, replete with moral, ethical, and scientific issues, is occurring in the private sector even as the federal government debates the issues. The only way to ensure that embryonic stem cell research is conducted with strict ethical and legal guidelines is to provide federal funding and oversight."

Signing the letter were Jim Greenwood, Peter Deutsch, and 165 others who voted for the Greenwood bill—the very purpose of which was to authorize the cloning of embryos that this letter pretends to find so alarming.

A vote for the Greenwood bill was a vote for the creation of embryos solely for research and destruction, nothing else. It was a vote for the very thing the *Washington Post*—and many defenders of fetal tissue research in the early 1990s—once explicitly rejected: creation for destruction. And so it is that the alliance of the

hubristic scientists and the squishy liberals ensures that some moral limits are no limits at all—just bumps in the road.

Anguished Moderates

Which raises the question: Can real lines be drawn? Can limits be set and coherent and lasting distinctions made? For example, Republican senator Bill Frist of Tennessee has proposed that all human cloning and the creation of embryos solely for research and destruction be banned; that the total number of embryos used for research be limited, but that embryonic stem cell research from spare embryos be approved and federally funded; and that there be increased funding for adult stem cell research. This is the sort of compromise—one that claims to be intellectually coherent, morally grounded, and practically achievable—that the anguished moderates seek.

There are many types of anguished moderates. There are morally serious pro-choicers, like representative David Wu of Oregon, who defend abortion but take concerns about the use of embryos seriously, and who realize that even the benefits of research do not justify risking a leap into a Brave New World of human cloning. There are the "soft" pro-lifers, like senator Orrin Hatch and former senator Connie Mack, who believe research on leftover frozen embryos and opposition to abortion are mutually consistent positions, since, as Hatch put it, "Life begins in the mother's womb, not in a refrigerator." Finally, there are those who believe that human cloning and research on embryonic stem cells are both wrong, but that cloning is by far the greater evil. This group is willing, if necessary, to concede some forms of embryonic stem cell research if it can draw a bright line against human cloning. It adopts, in other words, a strategy of containment, a melancholy realism about where we are and what is possible.

There will be strong pressure on both the Democratic Senate, which must decide what to do about human cloning, and President Bush, who must decide whether or not to authorize public funding for embryonic stem cell research, to come down somewhere in this anguished center.

President Bush, if one takes his earliest statements seriously, believes that research on human embryos is wrong. He assured his pro-life supporters during the campaign and in the first months of his presidency that he would not allow federal funding for research "that involves destroying living human embryos." But now he must decide whether to hold to this position, or to give in to the massive pressure to authorize at least some federal funding for embryonic stem cell research. And he must also decide how strongly to push for a ban on create-and-kill embryonic research in the private sector.

Senate majority leader Tom Daschle has a different dilemma: The Democrats risk becoming the party of human cloning. After all, Democrats in the House voted 153 to 53 in favor of embryonic cloning; Republicans voted 194 to 25 against it. Daschle's comments after the House vote last week suggested that he is aware of this risk, and that he stands somewhere in the anguished center, if on its left-leaning,

pro-research, pro-choice edge. In his statements, he went out of his way to separate the cloning debate from the stem cell debate—decrying cloning and endorsing stem cells. But what he and his party will do in the Senate is uncertain. His precise wording—"My preference is to ban cloning, period, but, you know, I also recognize that these are very, very complicated issues"—leaves some wiggle room. Will he challenge the research establishment and the plurality (perhaps even the majority) within his own party that approves of embryonic cloning? Or is health-at-any-cost the new defining principle of liberalism? Is this where the "pursuit of happiness" has taken us?

Anti-Brave New Worlders

Those in the last group, which includes the authors, share a foreboding about where the new science is taking us. Its members made up the core of support for the Weldon ban on human cloning, and comprise moral conservatives (mostly religious) and some on the morally serious environmental and anti-corporate left. They imagine with horror a future that looks like Aldous Huxley's Brave New World, C.S. Lewis's abolition of man, or Pope John Paul II's culture of death. And they want to stop it.

In his brilliant critique of human cloning in the *New Republic* in May 2001, Leon Kass began with the following admonition:

> The urgency of the great political struggles of the twentieth century, successfully waged against totalitarianisms first right and then left, seems to have blinded many people to a deeper and ultimately darker truth about the present age: all contemporary societies are traveling briskly in the same utopian direction. All are wedded to the modern technological project; all march eagerly to the drums of progress and fly proudly the banner of modern science; all sing loudly the Baconian anthem, "Conquer nature, relieve man's estate."

What we are debating now is whether we have any choice in how this march turns out, whether we can stop or turn back, and whether we even want to. It is in the nature of modern democracies, certainly American democracy, that issues move in and out of sight. At present, we are in the midst of a debate on embryonic research, human cloning, and stem cells. But the choices and advances that have placed these dilemmas before us did not happen overnight. They happened step by step, one innovation after the next. The dilemmas themselves were always there, if perhaps not always quite as pressing as they now seem.

Indeed, Kass's alarm in 2001 sounds similar to his warnings in the early 1970s, when he argued that the unnatural manufacture of human life through test-tube babies would lead us down a path on which it would be difficult to stop. But since then, after the initial shock and horror of each new technological development, there came a period of quiet momentum in its favor, then tacit acceptance, then normalcy.

Now, the issue is publicly joined. Are there moral markers that can hold? Can we preserve the benefits of medical progress without succumbing to a post-human

future? Which of our past decisions—or non-decisions—must we revisit? And how solid are the compromises of the anguished moderates? There is, in the best of these compromises, perhaps some of the prudence of those, in the 1850s, who thought it was enough simply to halt the spread of slavery. But as with slavery, there are inconsistencies and temptations that make the anguished moderate position unsustainable. Even if some version of Senator Frist's hair-splitting prevails, it might well turn out to be a mere Missouri Compromise, with more fundamental battles just around the corner.

For example: Any compromise built on the distinction between leftover embryos and embryos created for destruction is problematic. Couples who create scores of extra embryos at fertility clinics, and who consent for their spare embryos to be used in research, know in advance that these embryos will be used and destroyed. Certainly, this is not the couple's main purpose in creating them—any more than destruction is the main purpose of researchers who create embryos in the noble pursuit of curing disease. In both cases, embryos are created by people who know in advance that they will be destroyed.

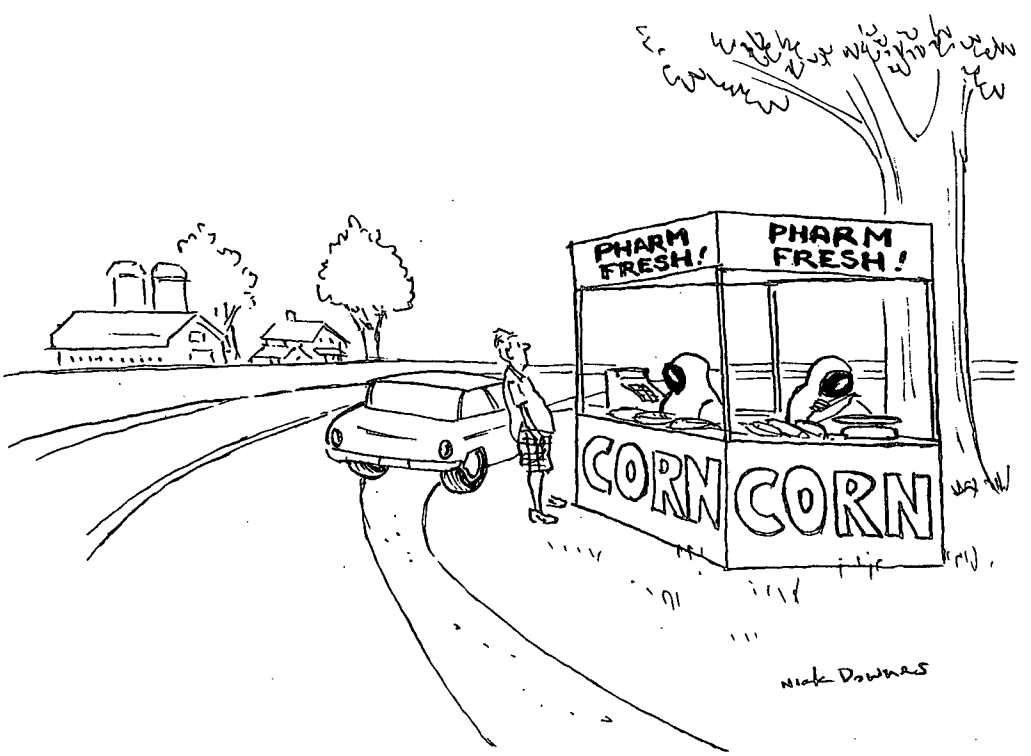
And what about private sector research on embryonic stem cells? If such research is morally objectionable, shouldn't it be banned, not merely deprived of federal funding? Moreover, if this work continues and succeeds, all users of modern medicine will benefit—and all will be implicated in the moral problem this "progress" raises.

Finally, even principled opponents of embryonic stem cell research and human cloning have not fully confronted the connection between the goal of relieving disease and suffering and the increasingly dehumanizing means of achieving it. Some defend doubling, tripling, quadrupling research on adult stem cells. Science itself, they say, dictates that we don't "need" embryonic stem cells, only adult ones—a point many leading scientists vehemently disagree with. And this is to say nothing of the morally problematic eugenic uses to which stem cell research—both adult and embryonic—will be put.

After all, isn't it our alleged "need" for such research that has eroded our ability to say no in the first place? Isn't it an inflamed desire for comfort, health, and longevity that impels us forward, that makes us justify what initially seems unjustifiable, that blinds us to the truth about human mortality and finitude, and about the dark side of our disease-ending civilization? To cure, after all, is to eliminate, to erase, to stamp out. What begins as a quest to halt disease may end as a "compassionate" effort to stamp out the diseased themselves. And soon enough, it is not just diseases and the diseased that are a problem to be done away with, but the inconvenient and undesirable—the unintelligent, or the old, or the unfit, or those of the wrong sex.

For now, the vote in the House to say no to human cloning, to reject the modern technological project's latest Faustian bargain, is heartening. Maybe this will lead to a more fundamental democratic engagement with the threat of science and technology to human decency and human dignity. But not necessarily. Perhaps instead

it will take the first live human clone to shock us fully awake. Or perhaps the emergence of the first great stem cell cure—or eugenic enhancement—will erode our resistance, and our conscience, even further, luring us all unawares toward a post-human future. But last week's vote demonstrates that such a nightmare is not inevitable.



The Great Stem Cell Hoax

Charles Krauthammer

Sanity and prudence combined to produce a great victory on July 31 when the House of Representatives overwhelmingly defeated—the margin was over 100 votes—the legalization of early human embryonic cloning. But the fight is not over. The Senate needs to act as well.

Before it does, however, it is worth preparing oneself for the gale-force hype that Senate advocates will unleash in defense of the indefensible. One has only to look at the debate on the floor of the House to see the extraordinary lengths to which the biotech industry and its allies in Congress will go to sell the deliberate creation of embryo factories for the sole purpose of exploiting and then destroying them.

While the media have been snooping under Gary Condit's bed, they have missed the real scandal of the season, the unconscionable deployment of fantasy and false hopes by advocates of "therapeutic" cloning for the production of stem cells. The basic premise—cure of the incurable—was stated by a *Newsweek* cover a month ago: "There's Hope for Alzheimer's, Heart Disease, Parkinson's and Diabetes. But Will Bush Cut Off the Money?" The theme has been echoed and reechoed nowhere more than in Congress.

The cosponsor of a permissive cloning bill, Peter Deutsch (D-FL), said this about the opposing bill totally banning cloning: "No one knows who is going to get Alzheimer's or Parkinson's or cancer. . . . What this legislation would do would be to stop the research . . . so that you could survive, so that someone who is a quadriplegic could walk, so that someone who has Alzheimer's . . ." He trailed away. You get the drift. The lion will lie down with the lamb.

Nancy Pelosi (D-CA), with characteristic subtlety: "Mr. Speaker, the National Institutes of Health and Science hold the biblical power of a cure for us."

Zoe Lofgren (D-CA): "If your religious beliefs will not let you accept a cure for your child's cancer, so be it. But do not expect the rest of America to let their loved ones suffer without cure."

Jerrold Nadler (D-NY): "We must not say to millions of sick or injured human beings, 'go ahead and die, stay paralyzed, because we believe the blastocyst, the clump of cells, is more important than you are.' . . . It is a sentence of death to millions of Americans."

Anna Eshoo (D-CA): "As we stand on the brink of finding the cures to diseases that have plagued so many millions of Americans, unfortunately, the Congress today in my view is on the brink of prohibiting this critical research."

Eshoo gets the prize. The brink? The claim that cloning, and the stem cells it

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Charles Krauthammer is a contributing editor of *The Weekly Standard* magazine, where this article originally appeared (August 20, 2001). It is reprinted with Dr. Krauthammer's permission.

might produce, is on the verge of bringing a cure to your sick father with Alzheimer's or your debilitated mother with Parkinson's is a scandal. It is a cruel deception perpetrated by cynical scientists and ignorant politicians. Its purpose is clear: to exploit the desperation of the sick to garner political support for ethically problematic biotechnology.

The brink? Cloning animals, let alone humans, is so imperfect and difficult that it took 277 attempts before Dolly the sheep was cloned. Scientists estimate that the overall failure rate for cloning farm animals is 95 percent or greater. New experiments with cloned mice have shown gross deformities. And here is the worst part. We have no idea why. We understand little about how reprogrammed genes work. Scientists don't even know how to screen with any test for epigenetic abnormality.

In other words: Even if you could grow embryonic stem cells out of grandma's skin cells, we have no idea yet how to regulate and control these cells in a way to effect a cure. Just growing them in tissue culture is difficult enough. Then you have to tweak them to make precisely the kind of cells grandma needs. Then you have to inject them and hope to God that you don't kill her.

We have already had one such experience, a human stem cell experiment in China. Embryonic stem cells were injected into a suffering Parkinson's patient. The results were horrific. Because we don't yet know how to control stem cells, they grew wildly and developed into one of the most primitive and terrifying cancers, a "teratoma." When finally autopsied—the cure killed the poor soul—they found at the brain site of the injection a tumor full of hair, bone and skin.

Let's have a little honesty in both the cloning and stem cell debates. Stem cell research does hold promise for clinical cures in the far future. But right now we're at the stage of basic science: We don't understand how these cells work, and we don't know how to control them. Because their power is so extraordinary, they are very dangerous. Elementary considerations of safety make the prospect of real clinical application distant.

Stem cells are the cure of the mid 21st century. Stem cell research deserves support because the basic research needs to be done and we might as well get started now. But the cure is for future generations. The cynical appeal to curing grandma is raw exploitation of misery. Nothing of the sort is about to happen. Those who claim it ought to be ashamed.

But rather than exhibit shame, the scientific community is rallying—in the name of retaining their autonomy from the ignorant dictates of lay society—to sugarcoat the news. Most notorious is the case of the research article on embryonic stem cells published in July in the journal *Science*, one of the most respected scientific publications in the world. The research showed that embryonic stem cells of mice are genetically unstable. Yes, you can make them grow over and over again, but we don't know how or why some genes are turned on and off. You can make a million copies of a stem cell. They may be genetically identical. But if different genes are turned on in the various cells, the results—the properties of the tissue or organism they develop into—can be wildly different.

Now the really bad news. The authors of that study initially had a sentence at the end of the paper stating the obvious conclusion that this research might put in question the clinical applicability of stem cell research.

But that cannot be said publicly. In a highly unusual move, the authors withdrew the phrase that the genetic instability of stem cells "might limit their use in clinical applications" just a few days before publication. They instead emphasized that this mouse study ought not hold back stem cell research.

This change in text represents a corruption of science that mirrors the corruption of language in the congressional debate. It is corrupting because this study might have helped to undermine the extravagant claims made by stem cell advocates that a cure for Parkinson's or spinal cord injury or Alzheimer's is in the laboratory and just around the corner, if only those right-wing, antiabortion nuts would let it go forward.

In reviewing a book on Parkinson's disease, Nina King, associate editor of *Washington Post Book World*, noted that when she was diagnosed with the disease 15 years ago, she was told that a cure was 5 or 10 years away. She has heard that ever since. A cure in 5 to 10 years "is like a mirage on the horizon, glowing with promise but ever receding."

The other scandalous myth being perpetrated, besides imminence, is inevitability. It goes like this:

The march of science will go on. Legislators can try to contain the growth of knowledge, but it is futile. Somebody somewhere will work on stem cells or cloning. So let us at least take it out of the closet and keep it in the public eye.

What this mantra does not take into account is the radical effect a ban on anything in science has on the quality and quantity of people working on it. Cloning has not even been banned, but because it is societally disapproved of, it is generally shunned by serious researchers. Look at the cloning conference called by the National Academy of Sciences on August 7 in Washington. A vast majority of researchers there view with horror the cloning of a human child—except for three researchers who declared their determination to do it. Three in the whole world.

One looked less stable than the other. Dr. Boisselier recently closed her "Clonaid" laboratory in the United States and is supposedly opening one offshore. When she spoke to the gathered about the right to do what one wants with one's genes, she did not inspire great confidence, possibly because she is a member of the Raelian sect, a cult founded by a former French race car driver after being visited by aliens in 1973. Seeing how marginalized cloning researchers are today even before a legal ban, one can imagine how much more marginalized they will be after one.

A ban works by robbing outlawed research of the best and the brightest. They are not going to devote their lives to a career where they must work in the shadows, ostracized, and under threat of arrest. That ought to encourage legislators to believe that society can indeed influence the direction of science.

Yes, in the very long run some science will break through. But one must not

underestimate the efficacy of political restraint. If you can restrain for decades something that promises a cure, imagine how many other, less morally repulsive, substitute cures will present themselves in the meantime. You cannot stop evil science, but you can delay it, and thus possibly supplant it.

That is why the House action banning all cloning was so important. The Senate must demonstrate its seriousness, too. Now that the president has permitted only research from existing stem cell lines, the Democratic Senate is sure to try to loosen that standard and permit stem cell research from discarded fertility clinic embryos as well. But until Congress has demonstrated its seriousness about preventing the creation of embryo factories for exploitation by banning cloning completely, it cannot be trusted on any question regarding human manufacture.

"I hope we can all still be friends!"

The Stem-Cell Slide

Michael Novak

I wish I could say that the president's speech to the nation on stem cells was as good as I had hoped. It was in many ways a wonderful speech: deeper and more philosophical than I have ever heard a president deliver, unusually balanced and fair in presenting opposing arguments, and clear in delineating both his own decision and the reasons for it. It was, in addition, heartfelt and compassionate toward all families who have members suffering from awful diseases or disabilities. I can even see how the president convinced himself, at the end, that he had found a ray of daylight through the opposing arguments, and arrived at a moral decision that seemed to him sound, and also politically defensible. During the last few months, I have heard many persons who think they are very smart lay out their arguments on this question. Not one of them did as thorough, many-sided, fair, and clear a job as President Bush did in his speech.

At the end, though, my heart sank. The president tried to maintain a position of principle, but what he ended up doing, despite his best effort, was giving away the principle. He put the Full Faith and Credit of the U. S. government behind the principle of using human beings as a means, albeit for noble ends. He offered a reason for doing this: The stem cells for whose use in experimentation he commits federal resources come from embryos already destroyed. Why not bring good out of evil, he argues, by now using these stem cells, which will otherwise be wasted, to search for cures for awful diseases? The outcome is not certain, but at least it's noble to try. This is a lovely and tempting thought. The problem is that when this source of stem cells runs out—soon—then those on the other side will demand more stem cells from more embryos. The demand for usable stem cells will swell enormously. This is particularly true if good experimental results are obtained. But it will even be true if they aren't: Look, partisans will say, you were too stingy, too narrow. You have ceded the principle, so now give up more of the specifics. The glittering utopia of science beckons just ahead.

Be alert to the beginnings of evil. It never comes under the appearance of evil, but always under the appearance of the beautiful, the promising, the idealistic, the pleasant. "Stop it in its beginnings," the ancient principle runs: the sooner, the easier.

Politically, the decision may play very well among a substantial majority. It is already clear that those on the left who you hope will attack it are attacking it, which will only reinforce those among right-to-lifers who accept the president's obvious good will, often deeply moving words, clearly articulated argument and patent depth of feeling. But I deeply fear the immense battles that lie ahead, and

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the gathering of heartened foes, who will very quickly sniff out the weak point and pry its own inner logic with all their force. It will take almost superhuman strength now for the president to hold the new position he has moved into, having surrendered the strongest ground.

That ground was a philosophical one, not a theological one, a ground born of reason rather than of faith. One of its classic articulators was Immanuel Kant. The president himself alluded to it in his speech, in the line about not using human beings as means for even the noblest of ends. You must never use a human being as a means, only as an end. To use stem cells obtained by killing living human beings in their embryonic stage is still using them as a means. It is not enough to say that the wicked deed has already been done—that the embryos have already been killed. The purpose of the killing was to obtain the stem cells. One ought not to implicate oneself in that process, not even for the noblest and most beautiful ends.

One especially ought not to implicate the United States, which Hannah Arendt once called humankind's noblest experiment. For this nation began its embryonic existence by declaring that it held to a fundamental truth about a right to life endowed in us by our Creator. The whole world depends on our upholding that principle.

We human beings very easily reason ourselves into taking positions that end up having the most tragic of consequences, positions of which we would never have approved had we seen those consequences at the time. For the fruit of the tree of knowledge over yonder appears to be very sweet, and we feel sure that if we eat of it, then happy endings (fit for a god) will result. Those endings have always turned to sulfur in our cheeks.

The fatal mistake often comes as a result of unexamined moral sentiments: affects and feelings that serve as moral guideposts without submitting to interrogation by reason. "I feel comfortable with that," President Bush—like President Clinton, indeed like just about everybody else in this fair land—is wont to say. It is as if Americans were ashamed to say that they reached a considered intellectual judgment, independently of their feelings. "I feel comfortable with that" seems itself to be more comfortable than "That's what I've reasoned to."

And this should cause us great uneasiness, because very often in the moral life, our feelings and sentiments are horrible guides to right action. It sometimes feels like sheer Hell to have to do the right thing, and most terribly *un*comfortable. For instance: When individuals in Nazi Europe made the personal decision to join the Resistance, they often did so feeling the most awful dread, sick in their stomachs about the prospect of being hunted out like animals, tortured, and killed in barbaric ways (on meat hooks, say). They could not afford to listen to their feelings. (Considerations of just this sort led Karol Wojtyla to abandon the philosophy of the moral sentiments he learned from Max Scheler, and to search for a philosophy that drove deeper to intellectual principle and a strong moral will.)

One thing this debate is showing the nation is the difference between those who can grasp, and be swayed by, intellectual principles and those who need warmer,

fuzzier comforts for their senses, imaginations, and sentiments. Thus, when Senator Hatch finds it easier to imagine life in the womb than in a clump of cells in a petri dish, he is not wrong about what is occurring in his imagination and sentiments. But those means of perception do not dig deep enough into the *what-IS-it?* of those cells. To do that, cold intellect must go to work, beyond the comfort zone of imagination and sentiments.

And those cells are a living human being—at a very early stage, to be sure, but unmistakably human: not a rat, or a cocker spaniel, or a fish. That's precisely what makes them so desirable to researchers.

Desirable: There's a key word. It is transparent, now, how hungry researchers are to get their hands on these embryos. And perhaps on the money and the fame that beckon just ahead. As Mr. Dooley reminded us, when a fella says, 'tain't the money, it's the principle—it's the money. Suddenly, even great scientists are forgetting the basic biology still being taught in the latest textbooks: that the first appearance of *human* beings is in the fertilized egg turned embryo. Suddenly, scientists are fudging: "Well, really, the human being comes later." Let us show no respect for the human being in embryo, not now. Postpone respect until later—not for this class of human beings.

The role of *desire* is palpable. Researchers *want* this research. the political class *wants* this research. People are making themselves believe, without evidence, and despite many warning signs to the contrary, that there *will* be glitteringly good results from these experiments, and *only* good results. Desire is getting miles ahead of cool judgment. The extremely plausible horrors of the future are being systematically kept out of the imagination.

I have enormous sympathy for Christopher Reeve, and profoundly hope that, by some miracle of medicine or grace, he is suddenly healed. Yet I am also disappointed by how earnestly one whom I still think of as Superman wants to have other human beings killed, so that he might be cured. He has also plaintively mentioned that some who now don't want embryos destroyed never said a word on their behalf earlier. But in fact, some 15 years ago, the Pope and Cardinal Ratzinger took a lot of heat for their principled opposition to in vitro fertilization—that is, to the very techniques of "clumps of cells in a petri dish" and "cells in refrigerators," followed by the wanton destruction of faulty or unwanted embryos, that so many now deplore as less than human. Disagree with their conclusions, then or now, if your own mind leads you to. But do not say that they did not grasp, earlier than most, the intellectual principles that are now unfolding before our sentient eyes, and our recoiling imaginations, and our resistant sentiments. Do not say that everyone was silent.

We are testing a great political principle: whether a nation of the people, by the people, and for the people can form great public decisions through open public argument, reflection, and considered choice—or must forever form them by passion and bias and desire and emotional herding.

The president, though he stumbled in his moral reasoning, conceived and executed a shrewd enough political stroke to have temporarily disarmed his foes, won some time, and earned sufficient public standing to lead the nation through a great new era in our history. There was once, in the late 18th century, a "new science of politics" and, later, a "new science of economics," to both of which our Founders contributed their share of innovations. We are now engaged in learning a "new science of morals," or more exactly a new science of public moral argument.

This is the worthiest of tasks for a free society, because what is public freedom for, if not for well-argued and wise moral action? What is the point of political liberty and economic liberty, if we are to live like less-than-human animals?

Toward That Brave New World

Paul Greenberg

Most Americans could sympathize with their president last week as he tussled with the weighty question of whether the federal government should support research on stem cells taken from human embryos.

His decision: Yes, to a certain extent.

Measuring his words carefully, George W. Bush might have been outlining the pros and cons of the issue on a yellow legal pad, each balancing the other under the general heading: Science vs. Ethics.

At the end, he had come out at a point just a little closer to Science than where national policy had stood before he made his decision.

The president had come up with a compromise that will doubtless strike many of his countrymen as fair, even cautious: Research will go forward on cell lines already derived from human embryos discarded by fertility clinics, but he would not approve the destruction of more embryos for experimental purposes.

The decision makes sense as a balancing act between Science and Ethics in a world in which we have come to divide the two. Just as we have learned to separate what is practical from idealistic, and Revolutionary Breakthroughs from the unsatisfying wisdom of the past, with all its cautionary tales and Thou Shalt Nots.

Once again we have set out to have, if not the best of both those worlds, then some combination of the two that will not leave us too uneasy. If that was the object, the president's decision makes perfect sense.

But what if science and ethics, the practical and idealistic, are only different facets of a single, universal moral order that was once well-understood?

Then the president's well-organized points and counterpoints come across as contrived and artificial, a way of avoiding the basic moral questions involved. And maybe only for a little while. For we all know that, having crossed this line, it will be that much easier to cross the next. Already there is a clamor in the U. S. Senate to finance experiments not just with existing stem cell lines but using embryos still living.

Why did the president choose to back away from his stance during the campaign, which now seems so long ago in terms of this fast-evolving issue? The answer may lie in one rhetorical question he asked about the embryos used in this kind of research: "If they're going to be destroyed anyway, shouldn't they be used for the greater good, for research that has the potential to save and improve other lives?" A very practical question. It's also a question that transfers the moral onus for destroying human life to others; the rest of us will only benefit by the result. If we the people are to be the beneficiary and accomplice, it will only be after the fact.

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It is only when we think more deeply than rhetoric, and in a single, life-respecting framework, that the president's carefully worded arguments turn out to be not so soothing after all.

Once, it seems, we understood such things. Consider the case of the Japanese medical experiments on prisoners of war during the 1940s. No one approved of the inhumanity that was then obvious in such research, but, after all, its subjects were no longer living. And here were the results all neatly filed in the Japanese Army's archives. Why not take a look? What harm would it do? Great advances might await in those neat, carefully kept records. Why keep Science waiting?

And yet something held us back, some inner revulsion all still shared, some respect for life even when it is past. Those records were set aside unread, unopened, untouched, unused. What a waste. And yet no one at the time thought so. No scientist or priest, politician or ethicist. Because all shared a single value system, deeply rooted from time immemorial, that told them: This work is contaminated. Not in any scientific sense but in a much older, almost instinctive way. It was contaminated by evil, another concept that has grown hazier since that time.

All those ghastly records, even the blank pages, had been rendered unfit for use because they had been produced by a deep disrespect for human life, by an arrogance disguised as Science.

No one, yet, is proposing that we destroy fully developed human life for experimental purposes—condemned prisoners, for example. Even though, "If they're going to be destroyed anyway, shouldn't they be used for the greater good, for research that has the potential to save and improve other lives?"

Most of us can still recognize the humanity in our fellow creatures. But we have become so present-bound, so unimaginative, so unscientific, really, that we no longer see the first stage of human development, the stage we and all our ancestors have passed through, as fully human. That some of these same "spare" embryos have been adopted, allowed to develop, and now are healthy children, does not faze us.

Nature herself does not draw artificial boundaries between blastocyst and embryo. There are no clear lines on her map, but we keep inventing unnatural categories like pre-embryo in order to justify our rush to do research on others of our kind. All we need do is persuade ourselves that they are not of our kind.

The president's presentation last Thursday was clear and precise, the boundaries he established exact and thought-out, but only on paper, not in nature and not within any larger, historically informed ethical order.

Whatever his decision says about research on human embryos, it says something troubling about this president's leadership. He may turn out to be an adequate president—but a drifting one. Despite his moralistic tone, George W. Bush may prove only another triangulator, always looking for a midpoint on which to balance public policy with public opinion, not unlike his predecessor.

A great president, a Franklin Roosevelt or a Ronald Reagan, does not merely reflect public opinion but shapes it. He does not assess all the political, scientific

and ethical pros and cons, weigh them in the balance and make their sum total his policy. Instead he shares an inner, coherent vision with the nation. It may not be a vision people grasp at first, but, listening to him, they come to see it, to share it, be moved and strengthened by it.

This most important of issues was an opportunity for George W. Bush to share such a vision, to be a great leader of a great nation unafraid to act on certain moral principles. Instead he gave us a list of pros and cons, and then split the difference.

But there were reasons for hope in the president's presentation, too, twinkling like stars in the enveloping murk. One was his emphasis on stem cell research using mature cells that need not be taken from living embryos. This approach has already demonstrated results, and it does not present the same ethical problems.

But the brightest ray of light in this mix was the president's appointment of Leon Kass, an ethicist actually worthy of the name, to head, yes, still another commission to study the implications of the brave new world now fast upon us.

Professor Kass caught on some time ago to our at first gradual and now rapid slide down this slippery slope, and how it happens. It happens, to quote one of his many observations, this one made years ago, because "the piecemeal formation of public policy tends to grind down large questions of morals into small questions of procedure." Which is just what is happening again.

Matters of Life, Death—and Politics

William Murchison

So we're all frothing along, wondering where Chandra Levy might be, and whether Gary Condit should resign, when up pops the question of stem-cell research. Then a televised presidential address; and a general surfacing and spouting by bio-ethicists; and a general summons to decision-making regarding matters of life and death. Gosh.

There are some oddities here. I think I can explain. All this discussion, all this argumentation and debate goes forward within a political context: over microphones more naturally used for mooting questions of national defense, tax cuts and Social Security. Matters of life and death are not political. Are they?

It depends on whether you mean political by nature or by adoption. By nature, no. Politics concerns the right ordering of human affairs—secular justice and so on. Questions of life and death—of ultimate purpose and destination—are inherently theological. Theology, as any American Civil Liberties Union lawyer will inform you, is outside government's purview. Therefore, why should an American president concern himself with questions centering on the starting point of life?

Because democratic politics has swallowed up . . . everything. Nothing eludes its jaws. Little enough room these days even for God (or His prophets) in a world where important senators and solemn jurists and experts who shout at each other on television "talk" shows claim possession of ultimate truth.

No, democratic governance and theology don't consort well: not when governance claims the privilege of making all the final calls.

Consider stem-cell research. What unique kinds of questions might theology raise concerning it? One would be enough: Who makes life in the first place? A book called the Bible is clear enough on that point (e.g., "[I]t is he that hath made us, and not we ourselves; we are his people and the sheep of his pasture")—the problem here being that democratic politics, as currently practiced, puts no stock in such claims. Everything is "Opinion." Politics is for sorting out Opinions. OK?

Not OK, actually. Not when a particular "opinion" may actually embody Reality. Ignoring Reality isn't smart—which is why some would say modern culture's biggest problem is the extent to which it has emptied itself of theology; specifically, of the Christian theology that once occupied its heart and soul.

For nearly 1700 years, the West held that Christianity provided an authentic account of The Way Things Were. Nowadays, you can't even get all Christians to buy into that account. As for those who couldn't care less, or who affirm "theological diversity," forget it. The obvious consequence: We end up with no convincing account of reality, hence no idea how to proceed.

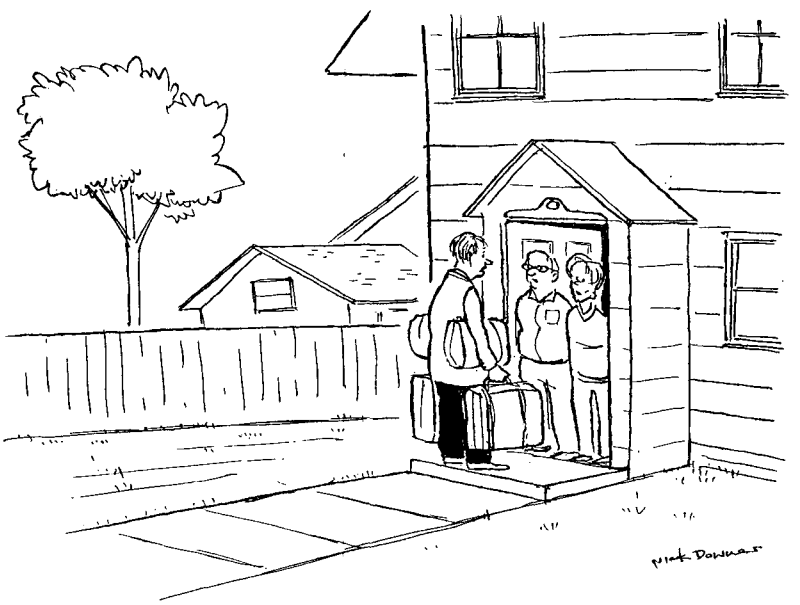
William Murchison, our senior editor, is a synicated columnist for the Dallas *Morning News*, where this column originally appeared (Aug. 15, 2001). It is reprinted with Mr. Murchison's permission.

Accordingly, like good 21st century folk, we hand off to politicians and judges. Isn't that why they're there—to make those calls too tough for the poor uninformed and confused citizenry?

Human life questions first became deeply political in 1973, when the U.S. Supreme Court discovered, hidden in the Constitution's inmost folds, the right to get rid of an unwelcome "fetus." Ohhh. How interesting. So it wasn't any longer a case of "(I)t is he that hath made us"? The newly discovered "right to privacy" trumped all that stuff. The court said so; the political process acquiesced. From there it's not much of a jump to stem cells and presidential addresses on same.

We live in, morally speaking, the messiest times ever: in which Reality is what the majority, at a given moment, decides it to be.

On stem-cell research, I gather, Americans are according their president cautious support, without being sure whether he was right or wrong. Whatever our views, I'm for extending the man a little sympathy. He's a politician, not St. Augustine of Hippo. He shouldn't have to be doing this, and we shouldn't be forcing him to.



"Mom, Dad—I don't want to be a grown-up anymore."

Abortion and Traditional Judaism:

Feticide in the MeAm Lo'ez

Richard Nadler

"Blessed are You O God, who sanctified the embryo in his mother's womb . . . You clothed him with skin and flesh, and knit him together with nerves and bones. You provided him with nourishment and life, and You prepared two angels to guard him in his mother's womb, as it is written, 'You granted me life and favor, and Your appointed ones watched my spirit'"—From a Ladino prayer offered by a cohen priest at the ceremony of Pidyon HaBen (redemption of the first born).

I. *Jewish Teaching on Life and Death*

American Jews generally support abortion. According to the 2000 Zogby Culture Polls, 61% of respondents who identify themselves as Jews are "pro-choice" without exceptions—roughly three times the rate of Christians, and five times that of Moslems. The same Zogby survey, however, found 10 percent of Jews opposing abortion except to preserve the life of the mother, and an additional 4 percent opposing it in all circumstances.

While some of these pro-life Jews may have arrived at that position by other routes, it is safe to say that most of them are traditional Jews whose pro-life views are derived from the Old Testament—particularly the Torah, or Five Books of Moses—and the exegetical writings of centuries of Jewish sages. The Orthodox Jew regards these latter writings not as "interpretations," but as a divinely guided tradition that forms an authoritative part of Revelation. In fact, the written Torah is considered a subset of the Oral Torah which God gave Moses on Mount Sinai.

The best source of this "guided tradition" in English is the 19-volume MeAm Lo'ez. First published in the 18th century, the MeAm Lo'ez is Orthodox Judaism's most popular adult education series. Its primary author, Rabbi Yaakov Culi, organized it around the weekly Torah readings of the Jewish liturgy. MeAm Lo'ez summarizes Jewish law, history, philosophy, customs, and mysticism, with a dash of illustrative parable. No other single work synthesizes so much Jewish tradition—Torah and Talmud; Mishnah

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and Kabala; Tosefoth, Mekhilta, Sifra and Sifri; and all the great orthodox sages, including Rashi, Ibn Ezra, Ramban, Rambam, Ralbag, Abarbanel, and Josef Caro. The work was originally published in Ladino, a Spanish-Hebrew dialect used by Sephardic Jews. At the beginning of the twentieth century, Rabbi Raphael Yitzchak Yerushalmi translated it into Hebrew, in which form its influence extended to the Ashkenazic Jews of Central and Eastern Europe. Starting in 1977, Rabbi Aryeh Kaplan's English translations, used herein, were issued by Maznaim Publishing Corporation as *Yalkut MeAm Lo'ez: The Torah Anthology*.

The tradition enshrined in MeAm Lo'ez teaches that God actively creates human life. The material from which that life is crafted, the process by which it is formed, and the soul with which it is endowed are all sanctified; i.e., set aside for God's special use.

Genesis 1:27 states that God made man "in His image." This applies equally to the soul and to the body. The human form is spiritual as well as physical. Here is how Rabbi Culi describes Adam's creation:

"When dust was mixed with water to form Adam, even before God gave him a soul, he was already a spiritual being. Since he was God's own handiwork, even his clay was like a soul. He was not like other creatures, whose elements are purely physical."

The human being attains this sacred form while still in the womb, directly by God's hand. MeAm Lo'ez attributes to Moses the following lecture on the subject of God's creative powers:

"He is the One who spread out the heaven and made the earth firm. His very voice is like fire. He can uproot mountains and split the earth's crust. His bow is the clouds and His arrows lightning bolts. He created the mountains and the hills, and covered the plains with grass. He makes the wind blow and the rain fall. He forms the child in the womb, and brings it out into the light of the world. He is the One who crowns kings, and deposes them at his will."

The stuff of which humanity is composed is sanctified—set aside for God's use—in the womb, before it is fully formed. Indeed, it is He Who forms it. The MeAm Lo'ez is filled with references to God's formative involvement at all stages of human pregnancy. God is considered a partner with the mother and father in a child's creation—but as the senior partner. It is He who endows the child with life.

"When a person was in his mother's womb," Rabbi Culi wrote, "he was in a tight, narrow place . . . God cared for him and fed him and prepared everything he needed."

The fetus is no mere lump of flesh. It exhibits sentience and spirituality.

MeAm Lo'ez quotes Job 10:12: "'Life and mercy You did with me, and Your Providence watched over my spirit." This, Rav Culi wrote, describes God's care of the human form and spirit in the womb. The unborn child receives not only God's formative care, but special powers of perception, and special learning. In an exposition of the Talmudic passage "Against your will you were born," Rabbi Culi describes the spiritual life of the pre-born child: "When a child is in its mother's womb, it has a lamp over its head, and can see from one end of the world to the other. All through his life, a person will not experience better days than these. Furthermore, during this time, a person is taught the entire Torah. When the time comes for him to leave the womb, he does not want to go, and he has to be taken by force."

The human character of the fetus is confirmed in both Midrash (Jewish wisdom writings) and Halakha (Jewish legal literature). Jewish tradition occasionally ascribes to a fetus the essential personality by which that human being will later be known. In one well-known Midrash, Esau and Jacob contend in the womb of Rebecca. "When she entered her seventh month," Rabbi Culi writes, "the two infants began to show signs of being very different. One appeared to be good, while the other seemed to be bad. [They] seemed to be wrestling with each other, as if one were trying to kill the other . . . Whenever Rebecca walked past the [Torah] academy of Shem and Eber, Jacob would push as if he wanted to come out into the world. When she walked by an idolatrous temple, Esau did the same."

During the Tenth Plague, Egypt was punished through its children, as every first-born child of an Egyptian died. According to one grim Midrash, this applied to the pre-born as well. "If a woman was pregnant with her first child," writes Rabbi Culi, "she miscarried."

Jewish law (Halakha) confirms the human status of the pre-born. There are few instances when a Jew can violate the Sabbath without incurring dire penalties. But in order to save a human life, acts otherwise forbidden may, indeed must, be performed. Thus, a man can stanch another's potentially fatal wound, or disarm a felonious assailant, or pull a drowning companion from water.

He can also deliver a human fetus whose mother has died. "If a woman is on the birth stool," writes Rabbi Culi, "and the birth process has begun, and then the woman dies, we are permitted to violate the Sabbath to save the life of the fetus. One may do everything necessary. One may cut open her belly with a knife to determine if the child is still alive."

Indeed, Rabbi Culi continues, whenever a pregnant woman dies, whether naturally or by violence, a Jew may, absent evidence that the child is dead, "violate the Sabbath even if the birth process has not yet begun, because it is

very possible the child is still alive."

The sacral identification of the child delivered with the child in utero is elucidated in the Torah: "God spoke to Moses saying: Sanctify to Me every first-born—the initiation of every womb—among both man and beast. It is Mine"—Exodus 13:2. From the time of the Exodus from Egypt, first-born Jewish boys assumed this special status. Having been spared, "passed over," in the Tenth Plague, they are specially consecrated to God's service. In the ceremony quoted from at the beginning of this essay—Pidyon HaBen, the redemption of the first born—pious Jewish parents make a payment to the religious authorities to redeem the first-born child.

Just as the first-born in the womb were taken by God during the Tenth Plague, so a woman's first fetus is considered the first born for Pidyon HaBen. If she miscarries during her first pregnancy, no subsequent child is considered "first-born." The initiation of the womb begins not at delivery but at conception. Indeed, according to one famous teaching, life begins even before conception. This teaching, contained in the Mishnah, the foundation of the Talmud, takes the form of a conversation between the Roman emperor Antoninus (Marcus Aurelius) and Rabbi Yehudah. Rabbi Culi presents it thus:

"Rabbi Yehudah was also asked, 'When does the soul enter the body? Does it do so when it is decreed on high that the mother will conceive, or does it wait until its flesh, bones and nerves develop?'

"Rabbi Yehudah replied, 'The soul does not come until the embryo is completely developed.'

"Antoninus then declared, 'How is it possible for the fertilized egg to survive without a soul? We see that if a piece of meat is left for three days without preservation, it spoils and is useless. Therefore, I maintain that when it is decreed for a woman to conceive, the soul enters the fertilized egg.'

"The rabbi agreed with him; when he repeated this, he said, 'This I learned from Antoninus. The soul is present even before the embryo is formed. He appears to be correct.'"

Jewish pre-conceptionism is sometimes expressed as material potentiality, sometimes as spiritual pre-existence. "In semen is distilled the finest substance in the body," Rabbi Culi writes, "and this is what makes fertilization possible. This fluid contains the potential for all of man's 248 limbs."

Even the association of semen with ritual defilement reflects its potential for human life. MeAm Lo'ez explains the paradox this way: "Human semen has the property of causing ritual defilement, just like a corpse. The mystery of this is because semen is destined to form an embryo, which can accept a divine soul. The unclean forces therefore wish to attach themselves to it,

since the nourishment of the Other Side comes only from the Holy."

The soul is, of course, timeless. How could it be otherwise, given the Eternal Being in Whose image it was created? But so is the form to which it is fitted: "The body," writes Rabbi Culi, "has 248 limbs and 365 blood vessels . . . The soul has exactly the same number of limbs and blood vessels, but these are spiritual rather than physical. Each part of the soul is in its counterpart in the body, and is strongly bound to it."

Jewish mysticism takes this a step further and says that the human soul exists before its integument in a body. Referring to this tradition, Rabbi Culi wrote, "At the time of creation, God foresaw that Israel would accept the Torah. He arranged a special place in the highest firmament known as Aravoth. Here were placed all the souls that were destined to be born into our world. Another place was set aside for all the souls which had already lived in the world, and have returned to their source."

"The Fifth Chamber," states MeAm Lo'ez, "is called Love . . . In this Chamber are all the souls which are destined to be born, as well as the form of every future body. Since the world was created, this place of souls has never been empty. When all the souls are used up, the Messiah will come."

The question "When does human life begin?" makes no sense in traditional Judaism if it focuses on the process of conception, gestation, and birth. The true answer resides in Who created it—the eternal God—and the manner in which He did so—in His image. Complete or incomplete, actual or potential, material or spiritual, human life has a sacral character, set off from the rest of creation by its eternity, derived from its Creator.

II. *Abortion in Practice*

Because of that sacral character, it follows that the deliberate destruction of innocent human life, before or after birth, is sinful. In fact, the practitioners of abortion include many of the most heinous criminals in Jewish history. In the texts of traditional Judaism, it is regularly associated with sexual sin and with murder, self-destruction and, ultimately, genocide.

The Anakim

"All the sages agree," Rabbi Culi writes, "that the people killed by the Great Flood do not have a portion in the World to Come, and also will not participate in the Resurrection."

He is referring here to the Anakim, also called Nefaliym—giants, or titans—whose sins brought destruction upon the world. Their souls, states MeAm Lo'ez, will not stand up for judgment in the Future "because they

have reached the epitome of sin."

The generations of that day were blessed in ways that men of our day are not, with long life and excellent health. The Anakim were wealthy, Rabbi Culi relates, and physically powerful. However, their advantages engendered an attitude of self-sufficiency and haughtiness which led them to despise God. The Anakim filled the earth with sin, particularly sexual sin. MeAm Lo'ez specifies the practices which brought God's wrath upon the world. They included promiscuity, homosexuality, and bestiality. "[The Anakim] would commit such perversions as publicly as a legitimate wedding," comments Rabbi Culi, "without any shame whatsoever."

Abortion was also rampant among the generation of Noah. Rabbi Culi derives this from Genesis 6:4:

"The titans were in the earth in those days, and also later, since the sons of the leaders came to the daughters of man, and they fathered them. These were the mightiest ones who ever were, men of name."

In Jewish tradition the "titans" or "giants" are not a race half-human, half-angelic, but "men of name"—the elite, the renowned. They were also men of destruction: the root of the word for "name" in Hebrew, Rabbi Culi notes, resembles the root of the word meaning "to destroy."

They were also abortionists. The written Hebrew of the Torah, lacking vowels, yields alternative readings, just as "H L" might outline "hail," "heal," or "hale" in English. Since nothing in Torah, say the Jewish sages, is random or superfluous, these alternative text-based readings must also be studied. In this case, the consonants for "Titans"—N F L Y M —also spell "aborted infants," or Nefiliym, thus: "The aborted infants were in the earth."

"The earth was literally filled with them," Rabbi Culi explained. "When a woman became pregnant through fornication, she was given drugs to induce abortion, that her shame not be known."

Sodom

"Sodom," MeAm Lo'ez tells us, "was a very wealthy city, exporting gold and precious stones. The area had so many resources that its populace had no financial worries. No other city was blessed like Sodom. The people, however, were very wicked."

The Sodomites, whom God blasted from the earth, were renowned not only for the sin that bears their name, but for their eager embrace of a broad range of crimes. In Sodom, the innocent were victimized for gain and humiliated for pleasure.

The four sins for which Sodom was destroyed were inhospitality, licentiousness, theft, and murder. But it was inhospitality that best characterized

the Sodomite society. Jewish sages relate that it was illegal in Sodom to provide bed and board to a transient, but it was acceptable to steal his goods, to torture him, or even to take his life.

Cruelty and exploitation were socially sanctioned; indeed, they were the basis of Sodomite law. For instance, the poor were forced to perform unpaid public services from which the rich were exempt. Statutes forced citizens to utilize costly monopolies. A thief injured in the commission of a theft could bring judgement against his victim.

"The warped form of justice in these cities," Rabbi Culi explains, "caused many people to be killed unjustly. In many cases, it appears that the law was written to favor the criminal. If a person beat a pregnant woman and forced her to miscarry, the law would not allow her to prosecute her assailant. If a complaint were lodged, the law required that she live with her assailant until she became pregnant again. This was considered 'restitution.'"

The Sodomite law was in sharp contrast to the seven Noachide Laws. Judaism teaches that these are universal commandments, generally applicable not only to Jews but to all mankind. Under these decrees of God, men are forbidden to commit murder; to steal; to worship idols; to blaspheme; to have forbidden sexual intercourse; and to eat from a living animal. In addition, there is an affirmative obligation to establish a civil order capable of enforcing these ethical norms.

Under the Noachide code, Rabbi Culi explains, "A gentile is guilty whenever he takes human life. This is true even if he kills an unborn child in its mother's womb. It is also true when the victim is so sick that he can be considered dead, and is sure to die in any case." Thus, in His normative code governing human behavior, God bans abortion and euthanasia as forms of murder.

Pharaoh and the Egyptians

"A seed must be buried in earth before it can grow," writes Rabbi Culi. "Similarly, the Israelites had to be buried in Egypt before they could grow in faith."

At first, the Israelites living in Egypt were treated the same as Egyptians. But then, when the old pharaoh died, his successor changed that policy. The opposition of the Jews began with acts of civil persecution. MeAm Lo'ez describes how Jews were stripped of rights of citizenship. They were disarmed, overtaxed, and conscripted into the corvée (forced labor). At all stages, the desire of Jews to assimilate into the Egyptian culture facilitated their enslavement. Eventually, they faced extermination.

Pharaoh's first plan, according to Jewish tradition, was mass abortion.

"Pharaoh did not order a general extermination of the Hebrews, young and old alike, even though it would have been easier," writes Rabbi Culi. "This would have given him a reputation as a king who kills all immigrants, and it would give his kingdom a bad name. Pharaoh therefore did not dare kill the Israelites openly, but sought ways in which to exterminate them secretly."

He commanded the Hebrew midwives to kill Jewish males while they were still in the womb. According to Midrash, Pharaoh taught the midwives occult techniques of determining whether a fetus was male or female—arts unnecessary to the modern abortionist. "Pharaoh wanted the midwives to abort the fetuses before they were born," says MeAm Lo'ez. "No one would then know that the children died because of his decree. The mothers would simply assume that their children had been stillborn. He therefore ordered that the matter be kept top secret, not to be revealed to anyone, Israelite or Egyptian."

The Egyptian's intent was genocidal. "Pharaoh knew," Rabbi Culi wrote, "that Esau had once threatened to kill Jacob, and had said, 'The days of mourning for my father are approaching; I will then kill Jacob' (Genesis 27:41). Pharaoh's advisors said that Esau's plan to annihilate Jacob's family was deficient. By the time Isaac died, Jacob might already have had many children. He could have left his wives pregnant as well. But if all fetuses are aborted, there will be no children, and the nation will be exterminated."

But the tactic of secrecy thwarted the strategy of genocide. The midwives continued to deliver Jewish babies:

"The midwives feared God, and did not do as the king of Egypt had instructed them. They allowed the infant boys to live."—Exodus 1:17

And they lied about it to Pharaoh:

"The king of Egypt summoned the midwives and said to them, 'Why have you done this, and allowed the infant boys to live?' The midwives replied to Pharaoh, 'The Hebrew women are not like Egyptian women. They know how to deliver, and give birth before a midwife can even get to them.'"—Exodus 1:18-19

It was the failure of his plan for genocide by abortion that led Pharaoh to issue his famous decree that newborn Jewish males should be cast into the Nile. God's response was the plagues He inflicted upon Egypt. These plagues demonstrated His suzerainty over creation; they were designed to edify as well as to punish. Each fresh catastrophe revealed the shallowness of the Egyptians' control over nature, both animate and inanimate; over their own senses; and indeed, over their own existence. From the Nile of blood to the taking of the first-born, the plagues were God's most comprehensive repudiation of "humanism" since the Great Flood.

Midrash teaches that an incident of manslaughter/miscarriage sealed God's resolve to send the tenth plague. "There was a woman," writes Rabbi Culi, "by the name of Rachel . . . who was in an advanced state of pregnancy. After spending a grueling day in the field gathering straw, she and her husband were kneading clay for bricks in a huge vat. Suddenly her time came, and she miscarried her first-born child into the clay. Before she could even recover her child, the Egyptians drove her and her husband into a new job, and the dead infant was formed into one of the large clay bricks. The archangel Gabriel then descended and snatched up the brick with the dead infant, and presented it before the Throne of Glory. That night, God took counsel with the heavenly tribunal, and it was decreed that all the first-born of Egypt be killed."

The Jewish Pro-life Tradition

Jewish tradition associates abortion with depravity, murder, sadism, and genocide. The generation of Noah practiced it to hide sexual sin. It was sport for the Sodomites and statecraft for Pharaoh. Its practitioners suffered the most terrible punishments from on high: The Anakim were exterminated in the flood, the Sodomites blasted with fire, and the Egyptians attacked in their possessions and persons by ten horrendous plagues.

The other side of the coin is that those who preserved and protected unborn human life, often under stressful and dangerous circumstances, acquired merit in God's sight.

Pharaoh's Decree

Jewish tradition identifies the ringleaders of the midwives who defied Pharaoh's decree as Yochebed, the mother of Moses, and Miriam, her daughter (and Moses' sister). The Torah says:

"God was good to the midwives. The people grew in number and became very numerous. Since the midwives feared God, He made houses for them." —Exodus 1:20-21

Rabbi Culi lists the benefits God showered on the midwives. He sheltered them from retribution from Pharaoh; He gave them wealth; but above all, He blessed them in their descendants. "Soon after this episode," Rav Culi writes, "Yochebed gave birth to Moses, through whom the Torah was given . . . Yochebed was thus the mother of Moses, who was the foremost of the Levites, and Aaron, who was the father of the hereditary priesthood.

"Miriam was also rewarded in a similar manner. One of her grandchildren would be Betzalel, the builder of the Tabernacle, who would be filled with a spirit of wisdom . . . Miriam had David as a descendent, thus giving

rise to the royal house of Israel."

But Israel was the greatest beneficiary of their courage. "It was in the merit of the midwives' willingness to risk their lives," writes Rabbi Culi, "and [to] stand up to Pharaoh that the number of children increased even more." They had thwarted Pharaoh's decree, and saved their people.

MeAm Lo'ez describes how Yochebed and Miriam approached the problems of what we today would term "crisis pregnancies." Sometimes, it seemed likely that a child would enter life deformed. "On many occasions," Rabbi Culi writes, "women had difficulty in childbirth, and the only way a living child could be delivered was if it were maimed. In such cases the midwives would pray, 'Lord of the universe. You know that we do not want to follow the instructions of this evil king. We are placing our lives on the line in refusing to obey his command. We therefore pray that You spare this infant, so that people not slander us and say that we maimed the infants because we were trying to kill them.'"

Sometimes, a birth involved mortal danger. "On many occasions," Rabbi Culi writes, "it seemed certain that either the mother or child would die in childbirth. In such cases, they also fervently prayed that both survive, and God heard their prayers. This is alluded to in the expression, 'They made the infant boys to live'" (Genesis 1:17).

Jewish oral tradition also teaches that the midwives performed many of the functions of a present-day "crisis pregnancy center," providing sustenance for mother and child after birth. The following passage in MeAm Lo'ez illustrates both the teaching and the formal technique by which it is derived:

"The Talmud notes that the expression, 'They allowed the infant boys to live,' is apparently redundant. Since the Torah states that they refused to obey Pharaoh's instructions, it is understood that they did not kill the young boys. The Talmud resolves the difficulty by stating that not only did they not kill the infants, but they did everything in their power to assure them a good life. If the parents were poor, the midwives would collect funds for them to raise the child." In rabbinic exegesis, every phrase of Torah—indeed, every letter—adds meaning.

Lot's Daughters

In the Jewish tradition, a woman's intent to give birth is itself sacred. MeAm Lo'ez credits two controversial women with purity of intent on the basis of their refusal to abort children conceived in sinful circumstances. After God blasted Sodom and Gomorrah, Lot and his surviving daughters fled first to Tzoar, then to a cave in the hills. There, the girls plied Lot with wine, slept with him, and eventually bore him two sons.

Lot's daughters assumed that the conflagration was universal, as in the time of Noah, and that they were the last people left on earth. "In telling us that they became pregnant," writes Rabbi Culi, "the Torah is informing us that their motives were pure. If not, they would have aborted the embryos, as prostitutes do. Instead, they gave rise to two famous nations, Ammon and Moab."

"The girls had the highest motives," states MeAm Lo'ez, "and they were therefore worthy that the Messiah would be their descendant. The older girl's son was Moab, and Ruth, the great-grandmother of King David, was a Moabite. As is well known, the Messiah will be a descendant of David."

The Jews in Egypt

Tradition teaches that the Jews, during their captivity, experienced moral as well as physical degradation. Most of them renounced circumcision, the sign of the Covenant, and many adopted the idolatrous practices of the Egyptians. As a consequence, their redemption—their eventual Exodus—depended on God's faithfulness and on the virtues of their forefathers. But MeAm Lo'ez records that they retained some slender merit upon which God could act: "Our sages teach that in the merit of four virtues the Israelites were worthy of leaving Egypt: they avoided sexual immorality, they avoided slander, they did not change their names, and they did not change their language."

As Rabbi Culi amplifies the first of these points, "The first merit of the Israelites was that they avoided sexual immorality. This was true of both the married and the unmarried. The Israelites knew that the Egyptians had very low sexual standards, and avoided them completely . . . The Israelites also did not engage in abortion. When Pharaoh had issued the decree that all male infants be killed, the temptation to abort infants, rather than have them born to certain death, was very strong. Also, the Israelites would have had ample cause to avoid conception. But they had faith, and obeyed God's commandment to have children, without giving heed to the consequences."

The Torah treats human procreation not merely as a norm, but as a commandment. The first statement of this decree follows the declaration of man's sacred origin and precedes the declaration of his suzerainty:

"God created man in His form. In the form of God He created him, male and female He created them. God blessed them, and God said to them, 'Be fruitful, and multiply, fill the earth and conquer it, and dominate the fish of the sea, the birds of the sky, and every beast that creeps on the earth.'"—Genesis 1:27-28

Jewish history is filled with agonizing decisions to bring forth children in an imperfect world. One famous example, taught in MeAm Lo'ez, brings us

back to Moses' parents: Amram, son of Kehath, and Yochebed, daughter of Levi.

"Amram was a leader of the Israelites. When Pharaoh decreed that Hebrew infants should be cast into the Nile, Amram said, 'The Israelites are having children in vain. The children are being drowned anyway.' With that he divorced his wife . . .

"Miriam came to her father and said, 'Father, your decree is worse than that of Pharaoh. Pharaoh only decreed that boys should be killed, while you are decreeing that the Israelites should be bereft of both sons and daughters. Pharaoh is a wicked man, and it is therefore unlikely that his decree will stand; but you are a saint, and your decree will certainly be carried out . . . Furthermore, Pharaoh is only doing evil in this world. Even though the infants are murdered, they have a portion in the World to Come. But your decree will even deprive them of the next world. If a child is never born, how can it gain a portion in the Future World?

"'You must remarry Mother. She is destined to give birth to a son who will set Israel free.'

"Although Miriam was only six years old at the time, her words made a profound impression on Amram. He remarried Yochebed, and was soon emulated by the other Israelites, who also took back their wives."

Confronted with the choice between a life of suffering and death, the Jew chooses life—but for reasons that are beyond life. To reject that gift is to reject God's providence, to deny God's justice, and to annul man's ethical duty.

Speaking of Miracles

Sandi Merle

It is not a simple matter to just walk into Israel, plant a tree, and go home. I've lived long enough to understand that, and I also understand that Israelis are just as cautious about who leaves their country as they are about who enters it (terrorists can come *and* go). That Israelis are "paranoid" doesn't mean they're wrong—So, with that in mind, journey with me to my favorite place on earth, a tiny nation steeped in controversy and chaos.

My travel companions are two cherished friends, Father James Loughran, Director of Ecumenical and Interreligious Affairs of the Archdiocese of New York, and Mary O'Connor Ward, "baby sister" of John Cardinal O'Connor, the late archbishop of New York. We had thankfully accepted all offers from our "friends in high places" for any and all special accommodations to facilitate entrance to and exit from Israel.

This trip had been postponed last November and again in March, because of the escalating aggression and hostility in the Middle East. Ludicrous, considering that our reason for going—our "mission"—was an absolute paradigm of peace: a dedication ceremony honoring the historic affiliation of two hospitals half a world apart—one Catholic (Our Lady of Mercy Hospital in New York), one Jewish (Assaf Medical Center in Israel)—and the man who helped make it happen, our beloved Cardinal O'Connor. The affiliation is a partnership committed to serving the human person, from pre-birth to natural death, from neonatology to geriatrics—the terminally ill, the frail, the frightened, and the innocent unborn will all benefit. I think of it as a minor miracle. Yes, *minor:* there will be even greater miracles here.

* * *

Riding from the airport to Jerusalem with our hosts from Assaf Medical Center, we are struck by the richness of the land, and think: "How green is my desert!" The irrigation system. The fruit-bearing trees, apricots, oranges, figs, olives, bananas. Bright, succulent, red strawberries, lush hedges of *purple* bougainvillea and a veritable riot of flowers in what was once a vast wasteland . . . also a miracle. Mary would later e-mail home that "Jerusalem looks like one big, beautiful bouquet."

Sandi Merle, a novelist and Broadway lyricist, co-authored (with Dr. Mary Nicholas) *From the Hunter's Net: Excerpts from a Jewish/Catholic Dialogue on Partial-Birth Abortion*, published by the Ad Hoc Committee in Defense of Life (New York, 1999). She is actively committed to interreligious dialogue.

But this is just the beginning. A most breathtaking moment is still ahead: watching Mary react to her first sight of the old city of Jerusalem. From the King's Court Garden at The King David Hotel, one gets the most dramatic view of the neighborhood where, to quote John Paul II, "God chose to pitch his tent." When one says "old" in Tel Aviv, it means 50 years; "old" in Jerusalem means three thousand. Mary's gasp is audible.

We stare and smile at the beauty of this City of Gold, even as we realize that what is so sacred and precious is also responsible for such contention in this part of the world. We stand motionless, drinking it all in: the fact that *it* still stands is another miracle.

There are many things we wish to see and do before Monday's ceremony. Doron, our trusted and accommodating driver and guide from previous visits, had been contacted as soon as we'd made airline reservations. He has ways and means to get us "where wise men fear to tread." But this day we would hear him say: "I cannot guarantee your safety in Bethlehem. I can take you only to the gate of Manger Square. The Palestinians will not allow my car any further. Please, my friends, come another time to take the Cardinal's sister there. I will escort her personally. Do not go now."

I had told Mary, before we left New York, that the most important advice I can give anyone visiting Israel is to *listen*. Listen to what the locals tell you. Heed their counsel. There is no compromise: either it's do-able or it isn't; don't guess. We listened to Doron and didn't go to Bethlehem.

Although Nazareth is under Israeli control, we had to rule it out also. To protect the Basilica of the Annunciation, the Israelis closed a myriad of once heavily traveled back roads; the round trip to Nazareth from Jerusalem would be six hours, and therefore "not do-able" on a visit this short. Yet we were determined that Mary see at least some of the holy places her brother had loved, and the monuments where he had paid his respects—places where he felt his life had been radically changed.

We begin in the Children's Room at Yad VaShem (Memorial Museum of the Shoah). The legend on the outside wall states the fact that 1.5 million children—teens, babies, infants, newborns—were murdered in the Holocaust. Yes—newborns. In *From the Hunter's Net*, a booklet about partial-birth abortion which I co-authored with Dr. Mary Nicholas, we include the following exchange from a Nuremberg trial transcript:

> M. Dubost: In the Revier, did you see any pregnant women?
>
> Mme. Vaillant-Couturier: Yes. The Jewish women, when they arrived in the first months of pregnancy, they were subjected to abortions. When their pregnancy was near the end, after confinement, the babies were drowned in a bucket of water. I

know that because I worked in the Revier and the woman who was in charge of that task was a German midwife, who was imprisoned after performing illegal operations. After a while another doctor arrived and for 2 months they did not kill the Jewish babies. But one day an order came down from Berlin saying that again they had to be done away with. Then the mothers and their babies were put in a lorry and taken away to the gas chamber. [In *Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No. 10. Vol. 1:* United States of America *v.* Karl Brandt, et al (*Case 1: "Medical case" 1949).*]

The huge Children's Room has an uncommonly intellectual nature. It is dark—as black as pitch, but as you begin to feel frightened by the darkness you see a light. A pinpoint, a taper. Then others and still others. And now you are walking through a maze of mirrors reflecting hundreds of points of light. No: thousands, tens of thousands, a million. Above you, surrounding you, beneath you. They swirl around your feet, your face, and your eyes. There is plenty of air, yet you feel you cannot breathe. Every so often you see a photograph of a face—a three-year-old, a six-month old, a nine-year old; all "enemies of the State of a madman."

In the middle of this immensity of anguish, sealed in a box—not unlike the glass case that held Cinderella's lovely little slipper—is one single pink baby's shoe with a strap across the instep, meant to be slipped over a pearl button. A strap broken, ripped away. We stop here and breathe deeply before continuing.

Again there is darkness, with the tiniest points of light. A cello can be faintly heard (Max Bruch's version of *Kol Nidre*) along with the somber reading of the names of every murdered child. It has been calculated that it would take one ten days, spending 24 hours a day, to hear the name of each child.

You are now surrounded by 1.5 million stars, representing the flower of Jewish youth, never to be replaced. Another Einstein perhaps, or Salk? Another Gershwin or Bernstein or Herman Wouk? I know that some are related to me, biologically; emotionally, they are *all* my children. Being here, seeing this, knowing this, I wonder how anyone, anywhere, could ever consider abortion. Again I vow, as I did years ago to Cardinal O'Connor, to dedicate my life to *Life*.

Before leaving Yad VaShem, we visit the monument to *Treblinka*, the death camp where my European family perished. I speak to them; especially to my great aunt, Shayna, a young hero in the Warsaw Ghetto Uprising who survived—only to die a more wretched death in the "camp." It is Shayna after whom I am named. I tell her again of my commitment to the pro-life movement: *"I hope you approve. Give me your strength, my darling Shayna; your courage. I think this is what you would have me do. We do it together."*

The following day we rise with the sun to attend Mass in the Tomb of Jesus, the church within the Church of the Holy Sepulcher. We are four in number: Father Loughran, his friend and Jesuit Father Donald Moore, who is active in interreligious affairs, Mary, and me. (There isn't room in this tiny church for even one more body.) The Mass intention was our beloved Cardinal O'Connor. Later on, at sunset, we are at the Western Wall, praying as we welcome the Sabbath. So Mary has the opportunity to stand at the Wall as her brother had done so many times, and as the Holy Father did just one year before.

(Fifteen minutes after we entered that area through the Jaffa Gate, a pipe bomb went off. We heard it. We heard the gunfire after the explosion and of course heard the ambulances, ever at the ready. Two tourists had been hurt and hospitalized. But they were alive! And they weren't us! A miracle for those we left back home.)

Another day . . . a surreal and moving experience as we actually lay stones of remembrance on the grave of Oskar Schindler, the German industrialist who single-handedly saved the lives of 1,200 Jews during the Shoah. His name is inscribed in the Book of the Righteous. We feel as though we're moving in slow motion, through a dream. We collect small stones to bring home and lay near the Cardinal's crypt in St. Patrick's Cathedral.

We visit the Tower of David, which provides a panorama of all Israel, the Church of the Teardrop, where stone walls "weep" after a rainfall, and the Tomb of Mary's Dormition. Each morning, noon and evening, we hear the "call to prayer" and know that people of all faiths have gathered here to acknowledge the presence of God in their lives. We beseech Him to replace hatred with love; revenge with contrition. This would indeed be miraculous.

But there *is* a miracle, a *major* miracle, awaiting us, just around the bend from Jerusalem in a town called Zerifin.

In 1948, what is now the town of Zerifin was mostly just an assortment of wooden army barracks and Quonset huts which had functioned as an army hospital in the days of the British Mandate. A handful of dedicated Israeli doctors had stayed on to build a "legitimate" hospital, one with floors and walls and rooftops. They would cater to people of all walks of life, of every religion and of none. In the Hebrew language, when celebrating the holiday of Chanukah—the eight-day supply of oil and the victory of the Maccabees—we say "*Ness gadol hayah shem.*" *A great miracle happened here.* That is how one feels at Assaf Medical Center.

Economically and politically disadvantaged, Assaf (named for the 7th century physician by that name who created the oath taken by every potential

doctor in Israel) was considered an "underdog" because its patients were among the poorest in the country. It was for this reason that the struggling hospital caught the eye of Aliza Begin, wife of the former Prime Minister. She began to spread word of it all through the Diaspora. Assaf Medical Center became an international cause, with private fundraising efforts undertaken around the world. Today it is a state-of-the-art medical facility. Maimed and malnourished children were the hospital's first patients. They naturally became, and remain, the Center's most important "guest celebrities." Pediatric rehabilitation, cardiology, oncology, neonatology—the accent remains on the tiniest citizens brought to Assaf from all over the world. No one is denied treatment here.

Books on medical ethics line the shelves; photographs of discharged youngsters of all ages, along with the children and grandchildren of the doctors who treat them, dot the walls. There is love here. Love and pride. Yet the doctors themselves remain humble. Where life is so fragile, one *must* not be proud.

There is something, though, that is unique to this part of the world. The transformation from barracks-style hospital to modern medical center had to include architectural precautions against "modern" terrorism. The devastating potential of chemical and biological weapons, suicide bombs, grenades, plastique and the rest, required the incorporation of "safe areas": rooms equipped with food and medical supplies which can be sealed off at the first sound of a siren, to secure the lives of the children and accommodate their families. This is the stark reality of Israel today—not fire-doors, bomb-doors.

We enter the neonatology unit, and from the cherubic look on Dr. Michael Goldberg's face, we know that he has something wonderful to share with us. But first a brief background (there is no room here for his multi-page C.V.): Michael Dorian Goldberg was born and educated in Cape Town, South Africa. In 1970, at the age of 29, he became an Israeli citizen. And in 1975, having earned clinical and research fellowships in both South Africa and the U.S., he was appointed director of Assaf Medical Center's Department of Neonatology and of Newborn Intensive Care, positions he holds today.

Dr. Goldberg summoned our little group to follow him. "Remember last year," he asked, "when I introduced you to a baby delivered in the 24th week of gestation? Well that baby is home and doing well and I expect any day we will be starting a correspondence. Her mother says she has a real crush on me. Kicks and screams whenever I come near her. You know how women are . . . covering up their true feelings!" Jim and I laughed with joy to hear that the baby we had been praying for was fine.

"Well, now," Dr. Goldberg continued, "I'm going to show you a little boy

who is 25 weeks . . . but he was delivered one month ago, at just 21 weeks! No, my dear ones, I am not going for a record. It's simply this: You know how closely I work together with Yigal." (That would be Dr. Yigal Halperin, Assaf's chief of Obstetrics and Gynecology.) "When Yigal is not pleased with what he sees on ultra-sound, we get together and make the most important decision of life. What we are able to do in this miraculous age of medical technology is give both baby and mother a better chance at life by delivering and treating the child as we would the mother. *Not* intra-uterally." We ask some questions; he offers answers. "The word 'viability' may now be tossed right out the window. The *Doctor* has to be viable. We have only one job here. Deliver babies; stay with them every moment of every day, keep them not only alive but well. When I put my arm through a flexible window and a little hand grabs hold of my finger, I'm hooked, I'm in love. No turning back."

So . . . these are our miracles. Miracles little enough to put in our pockets. But why would we want to take them from an angel like Michael Goldberg? And God in his wisdom has given Michael Goldberg the perfect partner in America: Martin Katzenstein, director of neonatology at New York's Our Lady of Mercy Medical Center, and the fourth member of the American delegation visiting Assaf today. In the June 4, 2001 issue of *New York* magazine, Dr. Katzenstein was named " one of the most accomplished minds in medicine in the fields of Neonatal nutrition and Neonatal ethics."

We have come full circle. From murdered children whose memories are being kept alive by those who pass through Yad VaShem, to beautiful newborn babies who themselves are being kept alive by men and women whose hearts are filled with love for them. The former is the wonder of wonders. The latter is the miracle of miracles. It will be easier to get through tomorrow's ceremony honoring the Cardinal. Easier, because we are able to reassure him of what is happening here.

Our dinners in Israel have all been special. We saved our favorite Moroccan dining room for this night, and it didn't disappoint. After a lovely meal, we walked back to the King David hotel and retired at a reasonable hour so we'd be ready for an early morning pick-up for the ride to Assaf. We had decided as well to be awake for our last Israeli sunrise of this visit.

As might be expected, everything about our pick-up went wrong. Wrong car . . . wrong *kind* of car . . . wrong driver . . . wrong passengers with us . . . wrong E.T.A. We were the last of the invited guests to arrive. But as they say in show business: "Bad rehearsal, good show." And a good show it was.

But let me back up for a minute and explain how we had all come to be here

today. It was Cardinal O'Connor's dream to foster interfaith cooperation among Catholics and Jews, primarily when it came to affirming the sanctity of all human life. Together with Father Loughran, the Cardinal headed the Roman Catholic/Jewish Dialogue for the Archdiocese of New York, where I became a key participant. As a member of the Board of Directors of the American Friends of Assaf Medical Center, I thought it would be a good idea to introduce His Eminence to the life-affirming ethics of this wonderful hospital.

After hearing a statement made by Assaf's OB-GYN chief regarding partial-birth abortion, the Cardinal became interested in an alliance. "We, at Assaf Medical Center do not perform this heinous partial-birth abortion," said Dr. Yigal Halperin. "I believe I can make that a statement for all Israeli hospitals. We know of this procedure . . . it is enough that the Serbs do similar things to the Croatians." In subsequent statements, Dr. Halperin called late term abortion morally repulsive, and a "barbaric form of population control." Assaf Medical Center does not perform "abortion on demand," considering it outside the Jewish code of law, which states that only a child, in utero, who is pursuing the life of the mother (literally, called *Rodeph* in Hebrew) can be aborted. (It's hard not to believe that the Children's Room at Yad VaShem has done more to discourage abortion, especially among Israelis, than any rabbi or preacher could hope to do.)

The Cardinal asked Father Loughran to work with me to find out all we could about the hospital. Dr. Mary Healy-Sedutto, former Chairman of the Catholic Healthcare Network, was assigned to the project as well. We were a group to be reckoned with. Even through his illness, all reports were made personally to the Cardinal. It gave him joy, and he asked me to promise to continue without him.

On May 18, 2000, just two weeks after his death, and in the presence of his sister Mary, papers of affiliation were signed at Our Lady of Mercy Hospital in the Bronx, New York. Now, finally, we are here in Israel, on the magnificent campus of this "baby-friendly" house of healing . . . physically and spiritually saying "Thank you." Leaders of many faiths have gathered in peace and harmony to pay respect to Cardinal O'Connor. There are Latin Patriarchs, Catholic priests, and rabbis. Also present are representatives of Israel's Foreign Ministry and the Ministry of Religious Affairs, government officials, medical personnel, health officials, nurses, doctors and donors.

During the moving ceremony, Mary Ward plants an evergreen tree to honor her brother, who was, she says, "a tree of life for all who grasped his teachings." This is followed by the unveiling of a plaque, which had been

imbedded in a boulder removed from the Israeli forest. It reads:

> The Affiliation between Assaf Harofeh Medical Center, Zerifin, Israel and Our Lady of Mercy Healthcare System, New York, USA, is dedicated with profound appreciation and admiration to His Eminence John Cardinal O'Connor, Archbishop of New York, for his perpetual devotion to embracing and affirming the sanctity of life for every human person.

Since our flight home was not until 1 a.m., we had traveled to the hospital with a comfortable change of clothes so that we could spend our last full night on the beach in Tel Aviv. Dinner under the stars with two of our hosts from the hospital, watching the sunset and the Israeli teenagers at their carefree best, would be a great way to remember this trip—or so we thought. Soon after arriving home, we learned of a bomb blast on that very stretch of beach: it killed more than twenty young people and sent over a hundred others to hospitals—including Assaf. This madness *must* end. "If we have common peace here," our driver Doron is known to say, "we have paradise."

Our dream is to return to Assaf next May, to lay the cornerstone for the foundation of the John Cardinal O'Connor Pediatric Rehabilitation Center. Nothing was more important to His Eminence than the well-being of children. And no one is working harder toward this end than his beloved sister, Mary O'Connor Ward. We pray that we will make that next trip together, in *peace*, which would be the greatest miracle of all.

Starved to Death by Order of the Court

David S. Oderberg

One of the most significant international treaties of the post-war era came into force on September 3, 1953. Called the European Convention for the Protection of Human Rights and Fundamental Freedoms, it was agreed by member governments of the Council of Europe, which had been established in 1949 as part of the Allied plan to "reconstruct durable civilisation on the mainland of Europe."[1] The United Kingdom ratified this convention in August of 1951; however, it did not become part of domestic British law until 1998 with the passage of the Human Rights Act, which incorporates virtually the entire Convention word for word. This legislation was hailed by the Labour Government as a "major step forward" in its program of constitutional reform,[2] enabling Britons to seek enforcement of their human rights in the domestic courts without resort to the lengthy and cumbersome process of applying to the European Court of Human Rights in Strasbourg.

Needless to say, the Human Rights Act has been praised on all sides, with barely a dissentient voice, as a triumph of legal and moral progress, a model for all states to follow. British lawyers had played a large part in drafting the Convention, and the U.K. was the first country to ratify it; it was almost a matter of national pride that the treaty should now be put at the very center of English law as a standard according to which all legislation must henceforth be interpreted and all judicial decisions made.

One might expect, therefore, that this shining beacon of ethical advancement would promote the safeguarding of human rights in the United Kingdom. It appears, though, that it depends on whose rights you are talking about. Many of the articles of the Convention, such as those governing the right to marry and the right to privacy, look like admirable recognitions of natural human entitlements. Certainly, if you are a film star worried about unwarranted press intrusion, you can sleep a little easier. If you are a delinquent teenager worried about receiving a righteous wallop from your exasperated parent, then you can take heart, because the lawyers will be queuing up to protect you under Article 3 (prohibiting "torture or . . . inhuman or degrading treatment or punishment").[3] If, on the other hand, you have the misfortune of not yet having emerged from your mother's womb, you are

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offered scant legal protection. Article 2 declares magisterially, and admirably: "everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law."[4] The Article goes on to make exceptions for the "defence of any person from unlawful violence," "lawful arrest," and "quelling a riot or insurrection." However, the sweeping nature of the right to life was undercut by the European Commission of Human Rights,[5] which helpfully explained in 1980[6] that the term "everyone" generally applied only post-natally and that the life of the unborn child was intimately "connected with, and... cannot be regarded in isolation of, the life of the pregnant woman."[7]

So we should not be too surprised to find that for all its grandiose words the Convention, and the Human Rights Act based on it, may not offer much in the way of safeguards for certain categories of human being. This appears all the more likely when we learn that "the Convention need not—indeed should not—be interpreted as it would have been by those who drafted it fifty years ago. It is a 'living instrument which must be interpreted in the light of present-day conditions' (*Tyrer v. United Kingdom* (1978) 2 EHRR 1 at para. 31). As such its meaning will develop over time and new case law will develop in an organic way without old case law being specifically overruled."[8] An English court, when interpreting the Convention, must do so "by the standards of society today, and not when the Convention was drafted."[9] When you combine this reliance on the shifting moral standards of society with the need for "inventiveness" on the part of lawyers,[10] you have two results: a document that will end up meaning whatever its guardians want it to mean, and a veritable bonanza for the legal profession, with dubious human-rights cases blooming like blue-green algae over an already decadent judicial system.

This decadence was displayed in all its glory as early as 1993, when the House of Lords, refusing to be bound by the outmoded common law concerning murder, sanctioned the starving to death of Tony Bland in one of the most notorious cases in English law.[11] Mr. Bland, injured in the Hillsborough Football Stadium disaster, had been in a so-called "persistent vegetative state" (which I will call, more properly, a persistent *non-responsive* state) for four years before the Law Lords allowed the hospital, in accordance with the wishes of his family, to deprive him of "artificial nutrition and hydration"(ANH), the now common technical term for food and water. If, then, English judges were prepared to be inventive in the interpretation of their own home-grown common law, should anyone be surprised if they were to take a similarly creative approach to imported legislation?

Enter Dame Elizabeth Butler-Sloss, President of the Family Division of the High Court of Justice. A cursory look at her judicial activity (or rather activism) reveals a decided unwillingness to be bound by old-fashioned moral standards. This was demonstrated most clearly when she was presented with the cases of Mrs. M and Mrs. H[12] (the public have been spared their names lest they appear more human than anyone concerned wanted them to appear; nor have we been given the names of the hospitals, for reasons which do not require elaboration). Both women were in persistent non-responsive states, and their doctors and families wanted them to be deprived of food and water. Dame Elizabeth was only too happy to oblige. After all, not even the Official Solicitor representing the two unfortunate women opposed the application: he was there only because the rules compelled him to be.

Mrs. M—49, married, with three children—had been in PNS for nearly three years following a cardio-respiratory arrest during surgery. She was being fed through a tube, and one consultant said she could live for many more years. Mrs. H—36, previously married, with one child—had suffered brain damage during a cardiac arrest after admission to hospital for pancreatitis. She had been in PNS for nearly a year. She had also had problems with feeding by tube and had been receiving only water for several weeks before the court hearing. There were other, surgical, methods available for administering food, but the doctors testified that these were risky and invasive and hence "not in the best interests of the patient."[13] Dame Elizabeth agreed. Her judgment on the application also concurred with the doctors and families: "On the evidence presented to me it would not be in the best interests of either patient to continue treatment."[14]

How was this decision reached? As a professional philosopher with a degree in law, I long ago learned that philosophical reasoning is not the same as legal reasoning. Lawyers are not logicians. The courts are there for the purpose of achieving justice, and a judge's reasoning cannot—and should not—be expected to read like an extract from the *Summa Theologica*. Nevertheless, this does not mean that judges are allowed to commit fallacies, to twist the natural meanings of words, to go beyond what the evidence permits one to infer—in short, to make a mockery of the process of reasoning common to all professions, from philosopher to stamp collector. And yet the judgment of Dame Elizabeth Butler-Sloss displays all of these traits. I can only sketch them here, and ask you to read the judgment for yourself if you want a snapshot of the state of the English legal system at the beginning of the twenty-first century, at least insofar as it impinges on social and moral questions of the first importance.

We can see the distortion of words immediately in the judge's referring to

the provision of food and water as "medical treatment." The fact that this action is given the polysyllabic title of "artificial nutrition and hydration," and then shortened to the acronym ANH, makes it no more a form of medical treatment than if you helped someone with a sprained ankle to cross the road and called it "artificial maintenance and transportation," or AMT. But the distortions go much deeper than that. Dame Elizabeth recognized two obligations in Article 2. There is the negative obligation not to deprive someone of his life intentionally, and the positive one of safeguarding life ("Everyone's right to life shall be protected by law"). Would not the starvation of Mrs. M and Mrs. H amount to the intentional deprivation of life? No, according to the President of the Court, because this requires "a deliberate act, as opposed to an omission, by someone acting on behalf of the state, which results in death." She adds: "The death of the patient is the result of the illness or injury from which he suffered and that cannot be described as a deprivation."[15]

It is astonishing how many mistakes can be committed in such a small number of words. For a start, why the distinction between acts and omissions in this context? Dame Elizabeth gives no reason, other than the implication that an omission cannot *cause* a death. So how would she treat a mother accused of starving her baby to death? Fortunately the courts still regard such a case as murder or manslaughter, but if we followed Dame Elizabeth's way of thinking that could not be right. Indeed, to say that withholding food and water "cannot be described as a deprivation" looks about as close to a logical contradiction as one can get. Lord Mustill in *Bland* at least recognized that the doctors would cause Tony Bland's death by withholding food and water,[16] and a commentator on the present case wrote: "it may be difficult to say that the doctors do not cause the death of the PVS patient by withdrawing ANH. . . . Better to rest her view of the scope of the negative obligation in Article 2(1) on a *robust, pragmatic*—and it can be said, *commonsense*—interpretation requiring active taking of life."[17] (Emphasis added.)

Secondly, in these cases there is more to the act than simply the withholding of food and water: there is in fact the intentional, positive action of *withdrawing* the feeding tube. So if Dame Elizabeth is looking for "a deliberate act, as opposed to an omission," she does not have far to search, any more than in the case of a conscious patient whose intravenous drip is pulled out by a malevolent nurse (occasionally, in Britain, such people still go to jail).

Thirdly, how is it that the death of the patient is supposed to be the result of the illness or injury which she suffered if the judge has already

agreed with the consultants that Mrs. M, at least, could live for many years? Since both women would die within weeks of being deprived of food and water, surely Dame Elizabeth should have suspected that this might be the true cause, even in the case of Mrs. H, who was having complications associated with her feeding tube.

What about the positive obligation in Article 2 to protect life? As one commentator says, while "the negative obligation is absolute, subject to the exceptions listed in Article 2(2) . . . the positive obligation in Article 2 is *more flexible* [emphasis added] and . . . allows the court to take account of a doctor's common law duty to act in the patient's 'best interests.'"[18] One can immediately see the potential for whittling the negative obligation down to nothing by means of a "flexible approach" to the positive obligation. Sure enough, Dame Elizabeth takes the flexible approach, judging that "in a case where a responsible clinical decision is made to withhold treatment, on the grounds that it is not in the patient's best interests, and that clinical decision is made in accordance with a respectable body of medical opinion, the state's positive obligation under art 2 is, in my view, discharged."[19] So it was not, according to Dame Elizabeth, in the "best interests" of Mrs. M or Mrs. H to stay alive. They were, in other words, better off dead.

By what process of reasoning did Dame Elizabeth Butler-Sloss reach this judgment? Unfortunately, the reasoning is never made explicit. What is clear is that she is following the Law Lords in *Bland*, who believed that Tony Bland was alive "but has no life" (Lord Hoffmann in the Court of Appeal, whose ruling the House of Lords upheld), that he was in a state "with no prospect of recovery" and in which feeding "confers no benefit upon him" (Lord Keith of Kinkel). (It may be of interest to note in passing that Dame Elizabeth herself was on the Court of Appeal in *Bland.*) Of course, for Dame Elizabeth as for the Law Lords, it was the "respectable body of medical opinion" which was of most influence. However, since the Official Solicitor "representing" the two women did not actually represent them, and since Dame Elizabeth refused to hear the view of the anti-euthanasia organization ALERT, the "body of medical opinion" the court considered was narrow indeed. Furthermore, English judges are not bound to accept professional clinical opinions as to what is in the patient's best interests. They are permitted to review those opinions and to hear contrary evidence. Since Dame Elizabeth chose not to do so, it is clear that she agreed wholeheartedly with the testimony she did hear. To quote another commentator on this case, referring as well to the recent Siamese Twins judgment which also considered Article 2: "The common feature to both decisions is that the court has determined the result

it wished to achieve (here ensuring that the switching off of life support machines for PVS patients can lawfully continue) *before* assessing the impact of art. 2."[20] (Emphasis added.) In other words, Dame Elizabeth knew where she wanted to go, and made sure she got there.

What reasoning there is in her decision is tortuous. For instance, how could she get around the fact that the European Commission of Human Rights had determined that Article 2 requires "preventative steps to be taken to protect life from known and avoidable dangers"[21]? True, the Commission also says that "the extent of this obligation will vary inevitably," but it explicitly refers only to "the source and degree of danger and the means available to combat it" and to "policy decisions relating . . . to the use of state resources," which it adds must be "compatible with the fundamental rights guaranteed in the Convention"—including, one assumes, the right to life itself. It says nothing about whether certain kinds of people are "better off dead." But the European Court in the same case said that Article 2 must not "impose an impossible or disproportionate burden on the authorities."[22] This is the phrase Dame Elizabeth seizes on, interpreting it to mean that treatment is not required if it is "futile," and it is futile if, as Lord Goff said in *Bland*, "the patient is unconscious and there is no prospect of any improvement in his condition."[23]

It is the plasticity of terms such as "impossible or disproportionate burden," "futile," and "best interests," or rather their willful distortion, which allowed Dame Elizabeth Butler-Sloss to reach the decision she was determined to reach. Giving food and water to a living human being is never futile—how can it be, if the person will die without them? Why should Lord Goff have assumed that giving food and water to Tony Bland was futile because he was unconscious with no prospect of recovery, if his lordship would not—as one charitably assumes he would not—have made the same assumption in the case of a person with terminal cancer, or mental handicap, or any other condition from which there was no prospect of recovery? What has the provision of food and water, any more than of warmth and shelter, to do with relieving the condition in question rather than with providing the necessities which anyone, whether in a white coat or not, is obliged to provide to another who is in his care? The Convention does not impose an obligation to strive to keep someone alive at all costs—nor should it. If this is what is meant by an impossible or disproportionate obligation, it is not a duty recognized by morality. Nor does morality recognize a duty to administer treatment which is not able to relieve the condition at which it is aimed—if that is what is meant by futile treatment, then the Convention must not be interpreted so as to contain such an obligation. As the European Court declared in *Osman*, however, the authorities are obliged by Article 2 to "do all that could be

reasonably expected of them to avoid a real and immediate risk to life of which they have or ought to have knowledge."[24] If this does not include the provision of food and water to a person in their care and trust, it does not include anything.

As for the concept of a person's best interests, I have argued elsewhere that there is something deeply incoherent about asserting that a person can be "better off dead," that he can have a life "not worth living."[25] Dame Elizabeth does not even begin to offer substantive reasons for her agreement with the consultants that it was not in the best interests of Mrs. M and Mrs. H to continue feeding them; one wishes she had not hidden quite so much behind the consultants' white coats and had instead given us the benefit of her wisdom on this matter. She does, however, add somewhat disingenuously that her judgment must not be seen to be relevant to (the inevitable) future applications to administer lethal injections to people in similar conditions. Perhaps this is why she was so concerned to portray the acts contemplated in the present case as merely omissions, and therefore not to be confused with straight-out murder.

The other main provision of the European Convention that was discussed in this case is Article 3, which declares: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment." You might think that starving a person to death was both inhuman and degrading treatment. Dame Elizabeth does not, however, share your intuition, for she judged that Article 3 did not apply to people who were "insensate." Why not? After all, as John Finnis cogently pointed out after *Bland*,[26] Tony Bland, though (apparently) insensate, had an inherent right to dignity, e.g., not to be sexually abused or thrown alive into the hospital rubbish. (Lord Mustill had said that Bland had "no best interests of any kind.") There seems every reason why the test for whether Article 3 has been violated must be an objective, not a subjective one: there should be no necessity that the person experience physical or psychological suffering.

You may (or may not, by now) be surprised to learn that it was the Official Solicitor "representing" the patients who prompted Dame Elizabeth with the thought that Article 3 had no application. She happily accepted this, and went on to cite two decisions of the European Court which allegedly supported the subjective test.[27] The first, if she had read it carefully, explicitly allows that treatment may be inhuman if it causes "*actual bodily injury or* intense physical and mental suffering" (emphasis added). Starvation causes actual bodily injury, so how does this judgment support her view?

The second decision held that "as a general rule, a measure which is a

therapeutic necessity cannot be regarded as inhuman or degrading." Surely the administration of food and water to a living person is a therapeutic necessity, and so by its nature not inhuman or degrading? (Moreover, the European Court has held that there is no violation of Article 3 in force-feeding a prisoner on hunger strike; so *a fortiori* there can be no violation if the person is unconscious.) And if so, does not the corollary naturally follow, that *not* to administer a therapeutic necessity *is* inhuman or degrading? Further, Dame Elizabeth gave no indication that she thought it a veritable therapeutic necessity that Mrs. M and Mrs. H not continue to live; so it is difficult to see how this decision supports her contention either. As one commentary on this case put it: "Is not one purpose of art. 3 to protect such a fundamental right to dignity, which every person must have whilst they are alive, whether they are asleep or awake, in PVS or fully conscious?"[28]

What I have just said, of course, assumes for the sake of argument that PNS patients are indeed insensate. The assumption is highly dubious, but Dame Elizabeth gives no evidence of having considered any empirical evidence to the contrary, some of which comes from physicians every bit as expert as the ones whose opinions received her judicial notice. She does not appear to have read the work of Dr. Peter McCullagh, Senior Fellow at the John Curtin School of Medical Research, Australian National University, suggesting that severely brain-damaged individuals may well experience the sensation of thirst.[29] Had she allowed representation by ALERT, she would have read the assertion by Emeritus Consultant Anaesthetist Dr. David J. Hill that "it cannot be securely claimed that PVS patients are insensate"; Hill added: "If it were not for the desire to kill . . . PVS . . . patients there would be no question of trying to convince the Court that these patients can have no sensation. Neither, of course, would there be any cause to re-classify the giving of fluid and nutrition as "medical intervention" rather than the humane treatment of the incompetent."[30] Nor, it appears, did Dame Elizabeth cosy up in her chambers with a paper called "Recovery of Patients after Four Months or More in the Persistent Vegetative State," by Dr. Keith Andrews of the Royal Hospital for Neuro-Disability in London.[31] Still less did she enquire after Dr. Andrew's more recent research on recovery from PNS after even longer periods, or ask for his paper revealing that in a survey of patients admitted to a brain-damage rehabilitation unit between 1992 and 1995, 43% were found to have been *misdiagnosed* as being in a "persistent vegetative state" and could in fact communicate by eye-pointing or using a touch-sensitive buzzer.[32]

I end with two brief reports, both terrifying, the second also unsurprising:

Catherine Roberts, a student whose parents had been informed by doctors that their daughter, who was in a coma, would never recover consciousness, has accepted £100,000 for negligence in an out of court settlement from the Royal Bournemouth and Christchurch Hospital NHS Trust.

She was not given food for two months after her naso-gastric tube had fallen out, because her doctors believed that she would die within a matter of days. Two months later she was still alive and doctors advised that hydration should also be withdrawn, as her death was imminent. However, after her parents had begun to make funeral arrangements, her mother observed a change in her daughter's condition. She saw her opening her eyes and blinking, and she responded to her mother's presence and then to questions. Since then she has made slow but steady progress, and is now reading for an Open University degree.

The case raises some difficult issues concerning the disparity of advice given by doctors on the treatment of PVS patients. Further research based on sound evidence is clearly essential in order to produce uniform definitive guidance for all doctors dealing with cases such as this.[33]

The second report concerns a new decision by Dame Elizabeth Butler-Sloss. On March 30 of this year, some five months after the decision I have been discussing, she ruled that a 73-year-old woman who had been on assisted feeding for eight years after a brain hemorrhage (having suffered a stroke five years before that) be "permitted to die peacefully." According to the newspaper report[34] (I have been unable to locate the judgment), "the patient showed virtually no awareness of her surroundings." Dame Elizabeth "was satisfied there was 'now no evidence of a working mind.'" The woman's family had wanted the hospital to act sooner, but the doctors were in this case cautious. The judge said, "I think that they might, if I may say so, have come sooner." Dame Elizabeth banned identification of the patient or the hospital trust until after her death, "expected in around two weeks. She was anxious," as the *Guardian* report put it, "to protect hospital staff from being troubled by 'various groups who hold strong feelings on the subject of life and death.'" Dame Elizabeth permanently banned the media from identifying the doctors or the hospital itself.

Two months earlier, Dame Elizabeth had issued a similar order in a case where such a thing was unprecedented: she banned the media for life from disclosing the new identities or whereabouts of two young men recently released after eight years in youth detention. The two were the murderers of the Merseyside two-year-old James Bulger.[35]

NOTES

1. Quoted in J. Wadham and H. Mountfield, *Blackstone's Guide to the Human Rights Act 1998* (London: Blackstone Press, 2000; 2nd ed.), p.12.
2. See the Government White Paper on the Human Rights Bill, reprinted in Wadham and Mountfield, at p.204.

3. Wadham and Mountfield, p. 74.
4. Note that although Art. 2 allows capital punishment, Protocol 6, to which the U.K. is also a signatory, declares that "the death penalty shall be abolished. No one shall be condemned to such penalty or be executed." Which makes one wonder what the strict legal situation would be if the U.K. had the death penalty and chose to use it. This is but one of the more egregious examples of the so-called "evolutionary" nature of the Convention.
5. Defunct as of 1999, since which time all human rights cases are dealt with by the European Court of Human Rights.
6. *Paton* v. *United Kingdom*, (1980) 19 DR 244.
7. The case concerned a child of less than ten weeks' gestation, so some theorists have speculated that the legal situation *might* be different if the fetus were viable: see Wadham and Mountfield, p. 70. Their speculation is, I fear, unwarranted.
8. Wadham and Mountfield, p. 25.
9. Ibid., p. 26.
10. Ibid., p. 67.
11. *Airedale NHS Trust* v. *Bland*, [1993] AC 789.
12. *NHS Trust A* v. *M*; *NHS Trust B* v. *H*, [2001] 1 All ER 801.
13. Ibid., p. 805.
14. Ibid., p. 806.
15. Ibid., p. 809.
16. *Bland*, at pp. 895-6.
17. "Incompetent Patient (Adult): *Bland* and the Human Rights Act 1998," [2000] Med. L.R., p. 342 and p. 344.
18. Loc. cit.
19. *NHS Trust A* v. *M*; *NHS Trust B* v. *H*, at p. 811.
20. R. Glancy and R. Weir, "Human Rights and Withdrawal of Treatment," *All England Legal Opinion*, Issue 5, Feb. 2001, p. 9.
21. *Osman* v. *U.K.* (1998), cited in *NHS Trust A* v. *M*; *NHS Trust B* v. *H*, at p. 810.
22. Ibid., cited at p. 811.
23. Loc. cit.
24. Loc. cit.
25. *Moral Theory* (Blackwell, 2000), ch. 4; *Applied Ethics* (Blackwell, 2000), ch. 2.
26. Cited by Glancy and Weir, op. cit.
27. *NHS Trust A* v. *M*; *NHS Trust B* v. *H*, at pp. 813-14.
28. Glancy and Weir, op. cit.
29. P. McCullagh, "Thirst in Relation to Withdrawal of Hydration," *Catholic Medical Quarterly*, Feb. 1996, pp. 5-12.
30. Letter of 16 Oct., 2000.
31. *British Medical Journal* 306 (1993), pp. 1597-1603.
32. K. Andrews et al., "Misdiagnosis of the Vegetative State: Retrospective Study in a Rehabilitation Unit," *BMJ* 313 (1996), pp. 13-16.
33. Reported in *Medical Law Monitor*, July 1998.
34. *The Guardian*, 31 March 2001.
35. I am grateful to Joanna Snelling, formerly Liaison Librarian at the University of Reading and now Librarian-in-Charge, Corpus Christi College, Oxford, for assistance with the research for this paper, which was delivered at the annual Right to Life Conference, Melbourne, August 2001.

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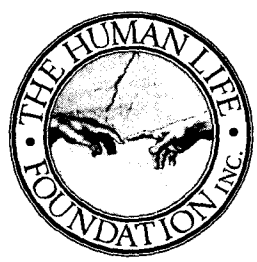
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