

*An Argument Against Cloning*¹

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It is technically possible to clone a human being. The result of the procedure would be a human being in its own right. Given the current level of cloning technology concerning other animals there is every reason to believe that early human clones will have shorter-than-average life-spans, and will be unusually prone to disease. In addition, they would be unusually at risk of genetic defects, though they would still, probably, have lives worth living. But with experimentation and experience, seriously unequal prospects between cloned and non-cloned people should erode. We shall ignore arguments about cloning that focus on the potential for harm to the fetus or resultant human

1 We are grateful to Brian Weatherson for prompting this paper with a series of posts we disagreed with at Crooked Timber (www.crookedtimber.org). We are grateful to him, Norman Fost, Fred Harrington, Daniel Hausman, Rob Streiffer, Joel Velasco, to participants at the *Ethics of Bearing and Rearing Children* conference in Cape Town, South Africa, in May 2008, and the editors of and referees for *Canadian Journal of Philosophy* for insightful and helpful comments on previous drafts.

being, where harm is understood solely in terms of physical and mental health. Unless the resultant people would generally have lives worth living there is no positive case for cloning, or any other form of reproduction, for that matter. If the resultant beings *will* generally have lives worth living there is a prima facie case for allowing cloning. We imagine the case in which the resultant beings will have lives *well* worth living.

Suppose, then, that we had already reached the stage at which human cloning was safe in this sense. Would there be any reason to disallow it? We share the dissatisfaction of defenders of legalizing cloning with most of the standard arguments against cloning.² But we believe that the pro-cloning arguments are also problematic, and fail to deal with a potentially important objection. In Section I of this paper we shall briefly explain our dissatisfaction with the standard anti-cloning arguments. In Section II we shall criticize the claim that there is a right to clone when that is either the only feasible, or simply the most efficient way, for someone to reproduce. In Section III we shall build on the critique developed in Section II to develop an anti-cloning argument that we think has more power than those surveyed in part one. We do not claim that cloning is *wrong*, but that making it available to people might lead to worse consequences than prohibiting it, and that since there is no right to clone it is appropriate to take these consequences into account when considering whether to prohibit it. We should emphasize that although our argument provides a *powerful reason* for prohibiting cloning even if cloning were completely safe, we are open to the possibility that other reasons in favor of allowing cloning might outweigh our reason against. In section 4, we consider two objections to our argument. Our concluding comments contain reflection on the methodological issues raised by the paper.

I The Failed Case Against Cloning

Note that, in order to justify prohibition of cloning without having to take into account any possible benefits it might have, arguments have

2 See, for example, Brian Weatherson and Sarah McGrath, 'Cloning and Harm' in James Taylor, ed., *Medical Ethics and Public Policy* (Aldershot: Ashgate, forthcoming); Mary Warnock, *Making Babies: Is there a Right to Have Children?* (Oxford: Oxford University Press 2002); John Harris, *On Cloning* (London: Routledge 2005); Carson Strong, 'Cloning and Infertility' *Cambridge Quarterly of Healthcare Ethics* 7 (1998); D. McCarthy, 'Persons and their Copies,' *Journal of Medical Ethics* 25 (1999) 98-104.

to establish that it is *very seriously* wrong. While some of the arguments we have seen against cloning may suggest that it constitutes, or would result in, something bad, none comes close to establishing a serious enough wrong to justify prohibition in all circumstances.

First, consider the argument that because clones and their genetic predecessors lack unique genetic codes, cloning undermines individuality and thus, personal dignity. We doubt that this argument has any weight at all. The genetic essentialism on which this argument rests is false; it is unable to account for the vast influence that environmental factors have on individual development.

For example, though most sets of monozygotic twins share much of their nurturing environment, no twin will have exactly the nurturing environment of her genetically identical sibling. Similarly, clones would be raised in a different nurturing environment from those who share their genotype and would normally have the added environmental variation of being raised a generation later than their genetic predecessors. Further, clones would have a different host egg and birth mother than their genetic predecessors. As Ronald Bailey notes, this 'maternal factor' ensures that the clone will not be a mere 'carbon copy' of its predecessor.³ The fact of a shared genetic code does not alone threaten individuality or dignity when there are such numerous environmental sources of personal identity.⁴

A second objection is that cloning would inhibit the genetic diversity sexual reproduction affords. Genetic diversity allows a species to survive the force of new and rapidly developing pathogens, and cloning would undermine the effectiveness of this line of defense.⁵ This argument assumes that the existence of cloning would entail the massive duplication of just one set of genes. But why think cloning would lead to a population where all individuals share a genetic code? More likely there would exist two or three copies of one genetic code at most, as when parents have children who are clones of themselves, or of other children who died prematurely. Anyway, if cloning were restricted to

3 Ronald Bailey, 'What Exactly is Wrong with Cloning People?' in *The Human Cloning Debate*, Glenn McGee, ed. (Berkeley, CA: Berkeley Hills Books 2002)

4 For an interesting argument that expands on this point, see Neil Levy and Mianna Lotz, 'Reproductive Cloning and a (Kind of) Genetic Fallacy,' *Bioethics* 19 (2005) 232-50.

5 For an expression of this worry, see Leon Eisenberg, 'Would Cloned Humans Be Like Sheep?' originally published in *The New England Journal of Medicine* 340 (1999) 471-5. Reprinted in *The Human Cloning Debate*, 170-83.

couples who could not reproduce by any other means it is not clear how cloning would have the undesired outcome.

The above objections just seem inert. Other objections, though, do succeed in identifying relevant value considerations to be weighed against others, even though they fall short of identifying a wrong.

Consider first the claim that someone who clones himself or herself will be too overbearing as a parent. Knowing that her child's DNA is identical to her own, a clone's parent would form expectations for how the child ought to think and behave based on the previous course of her own life. Cloning is thus inherently despotic. Leon Kass: 'In some cases, the despotism may be mild and benevolent. In other cases, it will be mischievous and downright tyrannical. But despotism — the control of another through one's will — it inevitably will be.'⁶

Overbearingness is a parental vice, but it is far from unique to those who choose to clone themselves. We rarely scrutinize childbearing and child-rearing motives closely enough to cramp the narcissistic and overbearing tendencies of parents, and our impression is that most anti-cloners would be reluctant to endorse family policies directed at controlling the motives and behaviors of parents who are neither abusive nor neglectful, just non-ideal.

Perhaps the availability of cloning would *encourage* overbearingness because cloning offers a more effective outlet for living one's own life through one's children.⁷ But it should be, in principle, possible to regulate cloning so that it is only available to couples that cannot reproduce by any other means. If infertile couples are no more overbearing on average than fertile couples, such regulation would do a great deal to prevent this danger arising.

Michael Sandel offers a related argument; that the practice of cloning, like many other readily tolerated risk management practices parents engage in, undermines an important human virtue of 'openness to the unbidden.'⁸ Openness to the unbidden, for Sandel, is valuable because it underpins the humility that facilitates social solidarity. Because parenthood is such a central experience through which people learn humility,

6 Leon Kass, 'The Wisdom of Repugnance: Why We Should Ban the Cloning of Humans,' *The New Republic* (June 2 1997) 17-26. Reprinted in *The Human Cloning Debate*; references are to the reprint. See 96.

7 Richard Lewontin considers and rejects a similar objection, that parents who clone would be treating their cloned children merely instrumentally. Richard Lewontin, 'The Confusion Over Cloning,' published originally in *The New York Review of Books* (1997).

8 Michael Sandel, 'The Case Against Perfection,' *Atlantic Monthly* (April 2004) 51-62

extending to parents ever greater control (or the illusion of ever greater control) over the qualities of the child threatens both the humility and the sense of solidarity that emanates from it. Openness to the unbidden is, we think, a virtue that corresponds closely to the vice of overbearingness; and we have some sympathy with Sandel's argument. But because genetic essentialism is false cloning gives parents less control over the qualities that matter than they might think, and therefore may do little to undermine humility in the long run.

Finally, consider Leon Kass's argument that cloning constitutes manufacture:

In natural procreation human beings come together, complementarily male and female, to give existence to another being who is formed, exactly as we were, by what we are: living, hence perishable, hence aspiringly erotic, human beings. In clonal reproduction, by contrast, and in the more advanced form of manufacture to which it leads, we give existence to a being not by what we are but by what we intend and design.⁹

We put aside the claim that separation of procreation from the sexual act leads to a loss of eroticism. The other argument here is that when parents reproduce the old-fashioned way they beget, but when they clone their actions are better characterized as making. The abandonment of begetting, Kass argues, constitutes 'a step towards manufacture.' Kass likens cloning parents to artisans, crafting their blueprint genes into technological products. But as artifacts, clones are not able to achieve equal status as persons to those who had the power to fashion them. Parents become analogous to craftspeople, fashioning their crafts as they please, and thus assume a sort of metaphysically dominant position over their clones.

Again, because genetic essentialism is false, parents who clone lack full creative and productive control over the artifact created. Even if they contribute their genetic code and therefore have a certain extra degree of foreknowledge about the constitution of their child, their foreknowledge is probabilistic at best, and they cannot control those aspects most central to the character of the cloned child. They cannot fully control maternal pre-natal factors, the child's nurturing environment, and cultural and historical position, for example. And this throws into doubt the status of clones as artifacts. Clones are not like pieces of pottery made according to specifications; to the extent that they would be moulded into individuals, it is by a combination of all of the factors just mentioned, not merely parental design. The relationship between

9 Kass, 93

clones and their parents would, in fact, be very similar to the kind of relationship any child has with her parent.¹⁰

We respond similarly to Kass's claim that cloning would force all humans into becoming technological objects. There is little reason to think that the presence of clones undermines the status of human beings as persons, since those features most essential to character — one's outlook on life and personal values, for instance — are developed over time as a result of the various environmental circumstances mentioned above, in addition to one's own choices throughout life. We have already suggested that environmental factors are responsible for personal identity much more than commonly assumed; they are at least as responsible as genetic factors. If what we take to be most essential to one's character is not threatened by cloning, the view that doing so undermines everyone's status as a person is on shaky ground.

None of these arguments shows that cloning is wrong. Some seem just to be mistaken, grounded in a genetic essentialism that is unsustainable. Others do articulate values that cloning, like many other practices, may well undermine to an extent which will vary depending on other features of the social matrix (in particular, we suspect, prevailing norms concerning the relationships between parents and children) and its undermining those values does count against it, if not decisively.

II Is there a right to clone?

So far we have argued that cloning does not appear to constitute or cause a serious wrong. In the next section we shall advance a reason for prohibiting it even if it is not wrong. But it is impermissible to prohibit a practice to which there is a right. So in this section we want to explore the question of whether there is a moral right to clone, given the existence of technology as effective as we assumed in our introduction: sufficiently good that cloned children have very good prospects of having lives well worth living. If so, then we should refrain from advancing a reason to prohibit it.

One way of arguing for a right to X is to claim that people have rights to freedom concerning their acts that have no negative consequences for non-consenting others. As we shall explain in the next section, we do not endorse this way of thinking about rights, but, even if we did, we think it is ill-suited to considering questions concerning the creation and rearing of children, who are by their nature non-consenting oth-

¹⁰ See our earlier argument against genetic essentialism.

ers and whose lives are shaped for better or worse by the decisions of others. An alternative account of rights grounds them in fundamental human interests. The most influential defender of a fundamental right to clone, John Robertson, takes this approach.¹¹ Robertson's argument, rightly in our view, treats cloning as just another form of reproductive assistance, one that does not raise fundamentally new issues. It highlights an important ambiguity in the idea of a right to reproductive freedom, and it introduces the central theme of our main argument: the absence of an argument for the claim that there is a fundamental parental interest in rearing genetically descended children.¹²

Here is the argument:

1. 'Reproductive freedom — the freedom to decide whether or not to have offspring — is...an important instance of personal liberty.'¹³
2. 'Infertile couples have the same interests in reproducing as coitally fertile couples, and the same abilities to rear children. That they are coitally infertile should no more bar them from reproducing with technical assistance than visual blindness should bar a person from reading with Braille or the aid of a reader.'¹⁴
3. A right to engage in genetic selection follows from the right to decide whether to procreate. 'People make decisions about whether to reproduce or not because of the package of experiences that they think reproduction or its absence would bring. In many cases they would reproduce if it would lead to packet of experiences X but not if it led to packet (sic) of experiences Y.'¹⁵

11 John Robertson, 'Cloning as a Reproductive Right,' excerpted from 'Liberty, Identity, and Human Cloning,' published originally in *Texas Law Review* 76 (1998) 1371-456. Reprinted in *The Human Cloning Debate*, 42-57.

12 For the purposes of this paper, we have characterized the relevant connection between a parent and child as 'genetic' and not 'biological.' The two types of connection often coincide, but they need not; a woman has a biological connection with any child she has gestated, even if she is not the child's genetic mother. Here, we set aside the concern that there may be a fundamental interest in sharing a biological connection with one's child, even if there is not a fundamental interest in sharing a genetic connection.

13 Robertson, 45

14 Ibid.

15 Robertson, 46

4. 'If most current forms of assisted reproduction and genetic selection fall within the prevailing notions of procreative freedom, then ... some forms of cloning are aspects of procreative liberty as well.'¹⁶
5. So there is a right to some forms of cloning.

Robertson goes on to elaborate the forms of cloning to which there is a right: a couple has the right to clone *its* existing embryos and *its own* existing (or no longer living) children; there is a right to clone third parties and oneself *only if* one intends to rear the resultant child oneself.

We concede premise 1¹⁷ and accept premise 4 for the sake of argument. The argument we shall develop in the next section counts against other assisted reproductive technologies just as it does against cloning, and our conclusion from part 1 is that the moral issues concerning cloning are not unique to it.

Consider premise 2. Robertson says that infertile couples have the same interests with respect to bearing and rearing children as fertile couples. But that interest in rearing children could be met by *adopting* children. Robertson might object, rightly, that rearing children who are not genetically one's own is a different thing from rearing one's genetic children. But then premise 2 turns on the claim that it is different in such a way that adoptive parents miss out on some interest that they have. Robertson, like other defenders of cloning, simply assumes this without argument. So the case rests on the interest in being able to conceive, gestate, and *bear* children. Again, we doubt that this interest is powerful enough to ground a *right*. Because child-bearing has normally been a necessary precondition of child-rearing for women the interest in rearing children has supported an interest in bearing children. But we see no reason to think that the interest in bearing children is, in itself, an interest strong enough to outweigh the powerful interests of others in conflicts.

Now consider premise 3. It is true that the choice we would make in situation A will depend on what we think the pay-offs are from the choices. But from saying we have a right to choose among the existing expected pay-offs it does not follow that we have a right to determine

¹⁶ *Ibid.*

¹⁷ See Harry Brighouse and Adam Swift, 'Parents Rights and the Value of the Family,' *Ethics* 117 (2006) 80-108 for an explanation of why the interest in rearing children supports a right. In Section III we will elaborate our more general understanding of interests and how very powerful interests can be right-supporting.

what package of expected pay-offs we should face in the choice situation. Suppose Celia is offered three jobs:

Job A) is in Manhattan with an annual salary of \$200k, and the expectation that she will devote almost every waking hour to the job, say 70 hours a week

Job B) is in London, with the more modest salary of \$125k and more modest expectations of her devotion to the job, say 45 hours a week.

Job C) is in Houston, a much less appealing city (ex hypothesi), but has, as compensation, a massive salary of \$300K, combined with European work expectations, let us say 45 hours a week.

We want to say, surely, that Celia has a right to choose among these packages. But none of them is *really* what she wants. She would, in fact, prefer a lower salaried, lower expectation, job in her home town of Swindon. Swindon contains jobs that meet that description, and she is qualified for them, but despite her extraordinary success in the metropolitan job market, she is always pipped at the post for Swindon jobs. It does not follow from the fact that she has a right to choose within the set of options available that she has a right to a *different set of options*, even if that alternative set is entirely feasible.

Robertson's argument fails to establish a right to clone because he makes the unwarranted assumption that our interest in rearing children involves both an interest in bearing them and in their being genetically connected to us in the relevant way. If he could show, independently, that we have a powerful interest in being the genetic parents of our children, that would repair his argument. In the next section we shall argue against the idea that this interest is powerful enough to sustain an objection to prohibition in some circumstances.

III An Argument Against Cloning

Consider two different ways of fixing the limits on government coercion.

Wide-scope liberty (NSL): the government should leave people free to act as they want to as long as, in doing so, they do not harm non-consenting others. Only when actions cause such harms are they subject to regulation.

Narrow-scope liberty (WSL): the government should guarantee those liberties needed for people to fulfill certain crucial human interests. As long as those liberties are protected the government may act so as to promote human flourishing, broadly conceived.

We shall consider NSL first and in detail, after which we shall briefly ask what implications WSL has for cloning. NSL is underwritten by the interest theory of rights:

An interest is sufficient to base a right on if and only if there is a sound argument of which the conclusion is that a certain right exists and among its non-redundant premises is a statement of some interest of the right-holder, the other premises supplying grounds for attributing to it the required importance, or for holding it to be relevant to a particular person or class of persons so that they rather than others are obligated to the right-holder. These premises must be sufficient by themselves to entail that if there are no contrary considerations then the individuals concerned have the right. To these premises one needs to add others stating or establishing that these grounds are not altogether defeated by conflicting reasons. Together they establish the existence of the right.¹⁸

So the NSL approach asks us to establish what basic interests need to be protected by liberties, and figure out, for any given class of actions whether they are relevantly related to these interests. If so, the liberty to pursue them is protected, if not, then it is an open question whether the liberty to pursue them should be protected (and this in turn is usually settled by asking whether protecting such a liberty is likely to inhibit the ability of others to fulfill fundamental interests of their own). Obviously this method is perfectionist; establishing what constitutes a fundamental interest requires commenting on what makes for a flourishing human life. In this regard it is worth noting that the supposed anti-perfectionist John Rawls adopts the same approach to the establishment of the contents of the Liberty Principle.¹⁹ And this approach need not generate an illiberal theory (unless liberalism is identified with a very strong anti-perfectionism). If liberals are right that there is a powerful

18 See Joseph Raz, *The Morality of Freedom* (Oxford: Oxford University Press 1986), 181-2, but see also all of chapters 7, 8, and 10. See also Neil MacCormick, *Legal Right and Social Democracy* (Oxford: Oxford University Press 1982) for another version of the interests theory of rights.

19 John Rawls, *Justice as Fairness*, 104-15; 148-52

interest in being able to reflect critically on one's own values and to act on the results of those reflections, then a conventionally liberal array of rights is likely to be justified.

As we have already said, we regard *rearing* children as a fundamental interest so important that it supports a right. This right is conditional, and its exact content is open to debate; most accounts at least make the right conditional on the parent refraining from abusing or neglecting the child's vital interests.²⁰ But rearing children makes such an important contribution to many people's ability to flourish that, as long as they do it well enough, they should not be prevented from doing it. Furthermore it is an extremely demanding task the successful pursuit of which requires such great commitment that nobody who is unwilling should be forced to do it except as a last resort in child protection (and perhaps not even then).²¹

People certainly have a powerful interest in not being prevented from having children or forced to have them. But this does not follow directly from a general interest in liberty: the freedom to *rear* children, after all, is a freedom to control someone else's life, and is therefore not relevantly like our interest in being able to control our own life. We believe that the interest in being able to rear children is, nevertheless a fundamental, and right-supporting, interest, which does not imply or support a right-generating interest in being able to conceive and rear child who is genetically connected to one.

This would not matter if there were no other fundamental interests at stake in the decision whether to permit cloning. But *in some circumstances*, the parameters of which we shall sketch, the practice of cloning may damage some people's fundamental interests, without fulfilling any fundamental interests of the cloning parents. In other words in the relevant circumstances it is an activity no instance of which is necessary

20 For useful recent discussions of the value of rearing children see Ferdinand Schoeman, 'Rights of Children, Rights of Parents, and the Moral Basis of the Family,' *Ethics* 91 (1980) 6-19; Francis Schrag, 'Justice and the Family,' *Inquiry* 19 (1976) 193-208; James Rachels, *Can Ethics Provide Answers?* (Lanham, MD: Rowman and Littlefield 1997), ch. 11; Eamonn Callan, *Creating Citizens* (Oxford: Oxford University Press 1997), ch. 6; Samantha Brennan and Robert Noggle, 'The Moral Status of Children: Children's Rights, Parents' Rights and Family Justice,' *Social Theory and Practice* 19 (1997) 1-23.

21 The exception we are imagining is basically catastrophic; suppose that 90% of the child population is orphaned, and there are nevertheless an ample number of childless adults who are unwilling to raise children; forcing them to do so may be better for the children than establishing large-scale orphanages. If so, it may be justified even though it intrudes deeply on the lives of the coerced adults. But even in this catastrophe it may not be justified.

for fulfilling fundamental interests, and the practice of which severely damages other people's fundamental interests. In such circumstances the case for prohibition is strong.

Precisely, the people whose interests would be damaged by a regime in which reproductive cloning is allowed are potential adoptees. Any society contains newborns and young children who have no parents. Those children have a very powerful interest in acquiring parents, because, in modern industrial democracies, we have been unable to develop alternatives to families that serve children's needs adequately. Children need both immediate provision of shelter, care, nutrition and affection, and the security of long-term relationships with responsible adults who will supervise their moral, cognitive, physical and emotional development. In other words, they need parents. So it is important, for the sake of orphaned or abandoned, or very severely abused children, that there be a pool of potential adoptive parents. The availability of cloning and other reproductive technologies may, in some circumstances, prolong the period in which infertile couples pursue non-adoptive avenues for the acquisition of children, and increase the success of those avenues. In those circumstances, children who would have been adopted in a regime of prohibition will not be adopted. Not all couples will adopt when non-adoptive avenues are closed to them, for sure; but *some* will. The class of people harmed by the availability of cloning and other reproductive technologies is just those children who would have been adopted under other arrangements.

We shall canvass the alternative possibility — that availability of cloning and other reproductive technologies does not increase the chances that a couple will succeed in having children by non-adoptive routes — later. Let us assume for now that it does. One objection to our argument is that, in fact, the pool of potential adoptees is vanishingly small in wealthy societies. But numerous children born in developed countries are never adopted because the market in adoption favors children without disabilities. More significantly, most developed countries allow couples to adopt children from the developing world, in which there is a plentiful supply of potential adoptees. The size of the pool of potential adoptees available for couples within a particular country is not restricted by national boundaries, but by the arrangements other countries implement concerning adopting-out. Couples in the contemporary US thus face a very large pool of potential adoptees. The availability of successful reproductive assistance damages *those* children's prospects for finding a family.

Since economic growth above a certain threshold seems to trigger declines in fertility rates, it may be that the global supply of potential adoptees will decline as developing countries become wealthier and, especially, as women's opportunities to participate in the labor markets in those countries become more equal to those of men. If those

countries block reproductive assistance or develop adoption-friendly cultures and policies the supply may completely dry up. Our argument is general; it applies to each jurisdiction, putting forward the same reason to prohibit in each country, which reason will have different weight depending on contextual factors. There are many such factors, and they include the extent to which the interests of potential adoptees in other countries are harmed by a policy of permitting cloning within the country in question.

Imagine a situation in which the supply of potential adoptees was vanishingly small. Then the class of people whose interests were damaged by permitting cloning would, in turn, be vanishingly small. But the supply of potential adoptees at any given time is not a perfect predictor of the future supply; changes in demographics, and in legal rules concerning and social attitudes toward abortion, will all have an impact on the supply.²² Once the new technologies were permitted, they would be very hard to restrict in the light of an increase in the supply of potential adoptees.

We have rejected the claim that there is a direct right to clone. But at this point the objector might invoke the idea that the couples in question do indeed have a right-supporting interest, which we have thus far neglected. This is the interest in being able to raise a child genetically related to at least one member of the couple. This interest, the objector might say, is so powerful that it does, indeed, support them having that option on the table, at least if the technological knowledge and resources are sufficient to make it available (which, by hypothesis, they are).

Brian Weatherson and Sarah McGrath consider the case of Danni and Mia, a lesbian couple who seek to clone a child because they seek a child who is genetically related, however slightly, to both of them. Considering the objection that (by hypothesis) Danni and Mia could have a child by some other means, they say:

Having a child by some other means would not be an appropriate alternative way of carrying out Mia and Danni's project, for two reasons. First, Mia and Danni

22 For example, a regime that prohibits abortion will face a larger adoptive pool than one that allows it. There may be independent reasons for prohibiting abortion, say, if it is determined to be morally wrong. If so, there can be no practical response regarding the legal permissibility of abortion because doing so would reduce the size of the adoptive pool. We have no idea about what kinds of policy responses would make a difference to the supply of potential adoptees, and even if we did there may be independent reasons for thinking that policies that reduce the size of the adoptive pool would be impermissible on unrelated grounds. Anyway, a residual supply of potential adoptees would persist no matter what policies are enacted to reduce the number.

could properly value having a child that is genetically related to both of them — two people who love each other. This won't be the case if Mia or Danni have a child with a third party. Second, Mia and Danni could quite properly value having a child that was genetically related only to them (and their ancestors) and not to a third party. So the project of having a child through cloning has some important values that would be lost if they had a child any other way.²³

As Mary Warnock says:

As we become more aware of the role of inherited genes in the character of our children, so the bringing up of children in no way genetically connected to us has come to seem a quite different undertaking from that of bringing up a child who shares our own genes. It may be worthwhile, but it is not the same.²⁴

For the claim that it is desirable to match up children and parents by genetic relationship to work in favor of cloning, the interest we focus on has to be adult-centered. Theorists (and non-theorists) commonly assume that children have an interest in being reared by their genetic parents, because they think that genetic parents will be better at serving the interests of the children.²⁵ But the child-centered conjecture, even if true, will not help here, because potential adoptees will not be raised by their genetic parents under any regime. And, unlike the cloned children, they will exist regardless of the chosen regime.²⁶ So the pro-cloners have to postulate a powerful parent-centered interest.

Noting that raising a genetically related child is different is not the same as claiming that it is more worthy, more desirable, or more valuable than raising an adopted child. Each of these claims just seems false. Warnock simply emphasizes that it would be a *different* project, which it is, though the difference seems to be one of degree, not of kind. Carson Strong has argued that raising an adopted child differs from raising a genetically related child in such a way that couples would reasonably be deterred from pursuing it. It is useful to consider this argument in order to begin to illustrate why we take adoption to provide a satisfactory child-rearing alternative.²⁷

23 Brian Weatherson and Sarah McGrath, cited above.

24 Mary Warnock, 40

25 For a skeptical look at these claims see Levy and Lotz. See also David Archard, *Children, Family, and the State* (Aldershot: Ashgate 2002).

26 See Velleman's valuable discussion of the non-identity problem in relation to adoption in 'Family History,' 372-5.

27 See Jean Bethke Elshtain, 'To Clone or Not To Clone' in Martha Nussbaum and Cass Sunstein, eds., *Clones and Clones* (New York: Norton 1998) 181-9, esp. 187-9 for

Strong argues that, as a form of 'collaborative' or third-party reproduction (like surrogacy or sperm donation), adoption carries with it a unique potential for interpersonal conflict within the family.²⁸ Parents might question whether, what, and when to tell their non-genetically related children about their origins. Children might feel a tension between loving the parents who have raised them and wanting to find their genetic parents. Consequently, the potential for strife within the family is great, and parents looking to have children might justifiably want to avoid that strife. This is too speculative a claim to have much weight. A counter-speculation would grant Strong's conflict in some families with adopted children but doubt that that conflict is more serious than other interpersonal conflicts experienced by genetically connected families, to the extent that raising adopted children is sensibly avoided but raising genetically related children is not. Conflict within genetic families occurs for a variety of reasons, and may cause deep divisions within the family; so seem no less significant than the particular conflicts within adoptive families.²⁹ Deciding not to adopt might eliminate *one* source of potential conflict, but it does not remove, or even significantly reduce, the possibility of familial strife. The adoptive project is surely sufficiently *different* that some couples will, when faced with the choice between raising a genetically unrelated child or none at all, choose none at all. But that does not indicate the *inferiority* of the adoptive project in meeting parents' fundamental interests in rearing children, however. Assuming a plentiful supply of potential adoptees, even in a regime where cloning is prohibited, an equally valuable, desirable, and worthy project is available to parents.

Strong assumes a certain kind of subjective welfarism; the fact that the projects are valued unequally by the agent is evidence that they are unequally valuable. The NSL approach, by contrast, asks whether

a more compact appeal for the moral desirability of adoption. For some insightful essays on the moral character of adoptive parenting see Sally Haslanger and Charlotte Witt, eds., *Adoption Matters* (Ithaca, NY: Cornell University Press 2005). See especially, for our purposes, chapters 3, 6, and 13.

28 Carson Strong, 'Cloning and Infertility,' reprinted in *The Human Cloning Debate*, 184-211. See 202-4.

29 Indeed, the content of the conflicts may not always be different. Whatever the plans of parents at the time of conception, in some social environments (like that of the contemporary United States) most children will not be raised exclusively by both their original parents, but in part by genetically unrelated adults who become the sexual partners of one of their parents when their parents separate. To the extent that this occurs, numerous families without adopted children already deal with negotiating non-genetically connected parent-child relationships.

a project is the kind that people have a fundamental interest in pursuing. Suppose that the relevant description under which people have an interest is 'having secure permission to raise a child, being able to look after its welfare interests, and overseeing its moral, emotional, physical and intellectual development.'³⁰ If the state is obliged to protect people's fundamental interest in pursuing *that sort of project*, then it is obliged to enable people to acquire children by some means, and to facilitate their successful pursuit of rearing them, but not to facilitate their being genetically related to their children. When no fundamental interests of other people are at stake the state might, and perhaps should, permit or even facilitate people pursuing variations within that description. But when other people's fundamental interests are at stake, it is obliged to make appropriate institutional arrangements for the sake of those interests prior to considering facilitating variations. And in the case we are describing, other people's fundamental interests will be damaged by facilitating pursuit of one variation within this description.

Should we regard people as having a fundamental interest in the narrower project of rearing a genetically related child?

The way to address this question is by looking at the potential difference between the rearing of the genetically connected and genetically disconnected child. Here are some possible differences:

1. It might be easier to rear a genetically connected child, because it is easier to understand her in both emotional and physical terms (insofar as she shares emotional tendencies, and proneness to certain diseases and physical abilities with one or the other parent).
2. It might be easier to love her, if she shares traits or tendencies with one parent. This might be because the parent sharing the child's traits recognizes himself in her, or because the parent who does not recognizes the other parent in her.
3. It might give parents a greater sense that they are continuing themselves into the future, as they are passing on their own traits specifically; this is the sense some parents claim to have of finding a sort of immortality (or extended mortality) in reproduction.³¹

30 Brighouse and Swift, 'Parents' Rights and the Value of the Family' and 'Legitimate Parental Partiality,' *Philosophy & Public Affairs* 37 (2009) 43-80

31 In 'Family History' David Velleman elaborates a fourth reason for wanting children to be reared by their biological parents; that being reared by people with whom

1) or 2), if true, might provide *child-centered* reasons for preferring that children are matched to genetically connected parents in families, where possible. And they may, sometimes, be true. Some parents may have a very difficult time rearing children temperamentally very different from themselves, and may also have great difficulty loving them. For example, nervous, shy or orderly people may have a great deal of difficulty rearing, and loving, extremely boisterous children. But others may marvel at the difference; and be delighted by the contrast between themselves and their child. Similarly, while some parents may love the traits in a child that they love in their spouse, others may despise traits the child shares with themselves or the other parent, especially if they are self-critical or do not love the other parent. These possibilities are simply too speculative to generate reasons for a policy, even from a child-centered point of view. And neither 1) nor 2) support a fundamental *parental* interest; parents have a right to be able to forge a certain kind of relationship with a child, and placing undue obstacles in the way of the establishment and development of that relationship would infringe on their right. But they do not have a right that this relationship made as easy as it possibly could be.³²

If parents believe they achieve immortality of any sort through any mechanism they are wrong. Passing on one's genes may give one a *sense* of playing a role in the future of the world. But one simply receives one's genetic material from others; it represents no achievement of one's own. One is merely a vessel participating in a random process. Actively participating in cloning oneself may give one a sense of control over the process, but this does not alter that one's genes are given one by a process over which one has no control. By contrast, rearing a child to flourishing adulthood in challenging circumstances represents a genuine achievement and contribution to the future, in which one's agency is directly and continuously engaged. Adults have a powerful

one has a fair amount in common genetically plays a vital role in healthy identity formation and maintenance. We are skeptical that the role is as important as his argument claims but, regardless, the interest he identifies is, again, child-centered and, as he points out, does not count in favor of encouraging parents to rear their own as-yet-non-existent biological children rather than existing potential adoptees who as yet lack families. See David Velleman, 'Family History,' *Philosophical Papers* (2005) 357-78.

32 As we noted in section I, Michael Sandel takes this argument further and suggests that the possibility of excessive risk management on the part of parents spoils the parent-child relationship. While there are reasons for supporting this strengthened suggestion, our point here is only that parents do not have a right to manipulate their relationships with their children, whether or not doing so is detrimental to their dispositions as parents. See Michael Sandel, 'The Case Against Perfection.'

interest in being able to face this challenge. But reproducing one's own genetic material in another person is just not an interest of this kind.³³

In the past thirty years artificial reproductive techniques have become widely available and the commercial success of the reproductive assistance industry is certainly evidence of very powerful consumer demand for genetically connected children. People go to great lengths to have genetically connected children and they clearly feel great disappointment when they fail. Is *this* evidence that there is a fundamental interest? We do not believe that it is. First, demand for something is never strong evidence for the existence of an interest (in the moral sense) because people can frequently pursue goals that do not serve their interests. Second, the rise of the reproductive assistance industry has coincided with a decline in the ready availability of non-disabled adoptive children because of the wide availability of abortion in Western European countries. Anecdotal evidence suggests that some people seem to choose reproductive assistance because it is less intrusive than adoption, because adoption agencies place child-welfare-related restrictions on the behavior of adoptive parents, and scrutinize the quality of their family life, whereas parents may treat their genetic children as they will.

We are open to the possibility that there really is a powerful parent-centered interest in being able to rear a genetically connected child. The more powerful this interest is, the more plausible it is that it can outweigh the interests of potential adoptees in entering families. Our claim here is not that there is no such interest, but that the burden of proof is on the pro-cloners to demonstrate there is such an interest, and to show that it outweighs the interests of other parties. We are unaware of successful attempts to meet that burden, in either the literature on cloning or that on parenting and the value of family life.

We have argued that on NSL there is a reason to prohibit cloning, the force of which depends on circumstances. What about WSL? One thought is that on WSL, too, there is a reason to prohibit. Identifying a party that is harmed by the practice of cloning, we have identified a party that is harmed by *instances* of cloning; people who clone cannot claim that they should be free to clone on the grounds that no one is harmed by their action. It is not that simple. Certainly, *some* who clone harm the children that they would otherwise have adopted. But even in circumstances in which a substantial number of potential adoptees

33 Levy and Lotz argue for this extensively by saying, plausibly, that i) such parents are misguided about the real nature of genetic identity, and ii) that allowing cloning will reinforce such misguidedness.

remain family-less, some, and maybe many, instances of cloning would not harm them. When cloning is legal people who clone but who would not have adopted had they not cloned, do no harm, in the sense that there is nobody who would be better off if they had decided not to clone. There are, of course, compelling reasons to have a single policy for everyone. The chosen policy, under WSL, would be sensitive to the numbers involved; if the numbers of people cloning who would have otherwise adopted are sufficiently large then that would count strongly in favor of prohibition.

Our worry about this line of thought is that it ignores, as the WSL approach seems bound to, the dynamic effect of the practices in place under a policy. Suppose that cloning is legal, cloning the practice becomes normalized; that is, it becomes something that people consider a normal option and are uninhibited about pursuing. When a practice is normalized, its normalization influences the motivation of actors. Consider cosmetic plastic surgery. When cosmetic surgery is exotic and unusual, most people feel somewhat inhibited from having it. But once normalized, it appeals, and can even appear as a necessity, to people who would not have sought it when it was exotic. So people who would never have sought the legalization of cosmetic surgery when it was unavailable, because they had no desire for it, not only resist its prohibition but make use of it, when it is available and normalized. Suppose, then, that cloning is permitted, and becomes normalized, with the result that people who otherwise would have adopted had they not been allowed to clone, come to see cloning as the preferable option. It may be true that if they, and only they, could not clone they would not seek to adopt; so, under WSL they are people whose decision to clone does no harm, and therefore is not registered as a reason to prohibit cloning. It is true of them that they prefer cloning to not having children and not having children to adopting. But they would have preferred adoption to cloning, and cloning to not having children, if cloning had not become a normalized practice. Via their effects on norms, regimes of availability and prohibition have effects on preferences: the problem with WSL is that it is not sensitive to those effects.

We are not claiming that this would happen. We are, rather, registering the possibility as a reason to think that the WSL approach may not give a reason to prohibit cloning but also for thinking that it is a problematic approach when it comes to moral questions that involve the kinds of coordination problems that arise with cloning.³⁴

³⁴ WSL is problematic for other reasons too. For example, it makes it difficult to give an account of the intuitive difference in worth between different liberties.

Now let's review the assumption that making cloning (and other reproductive technologies) available will increase the number of couples with genetically connected children. Whether it does depends on two factors: how reliable the processes involved are, and how assessments of their reliability influence choices to delay reproduction. As we have noted, declining fertility is a natural consequence of aging. Couples may make two epistemic errors when choosing how late to delay reproduction. They might underestimate the rapidity with which their fertility will decline. Or they may assume that the available reproductive technologies will be more effective than, in fact, they will, in correcting for the decline in fertility. Suppose they make the second error; they may delay reproduction for longer than the reliability of the technologies can effectively correct. In this case, the availability of the technology actually makes couples less likely to acquire genetically connected children. But, it may also make them less likely to acquire children altogether. If couples can only reproduce naturally or adopt, a couple who cannot reproduce naturally immediately faces the choice of adopting. If the options include a variety of unreliable fertility treatments, the couple may be encouraged to pursue the genetically related child through the various processes. They may become more invested in the project of acquiring a genetically related child than in simply having a child; by the time they admit defeat they are older, and may no longer be satisfied with a genetically unrelated child.³⁵

We are not arguing that this happens systematically, just pointing out that a regime of availability might, in some circumstances, not be effective in delivering more genetically connected children to families than a regime of non-availability; and that even then it might still have costs for potential adoptees.

Now consider two ways of influencing the weight of the reason we have offered for prohibiting cloning in given circumstances. A government might reduce the weight of the reason by reducing the pool of

As Ronald Dworkin observes, most people have wanted to drive the wrong way down a one-way street when no other cars are present in their own lives, but not the freedom to use racist speech against others; yet many think that racist speech should be protected as a right, but that the government legitimately prohibits driving the wrong way, even when doing so would place no-one at risk of harm. See *A Matter of Principle* (Cambridge, MA: Harvard University Press 1986), ch. 8.

35 We should note that some proportion of couples who seek assisted reproduction do so not because having a genetically related child is their first preference, but in response to the barriers to, and intrusions into their personal lives involved in adopting children. This trigger for demand of assisted reproduction could be addressed by making adoption easier and less traumatic for potential adoptive parents.

potential adoptees by, for example, embarking on a campaign of education about reproduction, making contraception readily available to those who do not want to reproduce, etc.³⁶ Or the government might seek to decrease the level of natural, as well as assisted, reproduction by adults who desire to rear children, in order to prompt more of them to adopt existing potential adoptees. Suppose a plentiful supply of potential adoptees. Since they have a fundamental interest in finding a family within which to be raised, and since adults have no fundamental interest in rearing genetically connected offspring, it would be better if all were adopted than if couples naturally reproduced and refrained from adopting. If that is right, then the government could legitimately take appropriate steps to encourage adoption over reproduction. Our argument seems to imply that such policies are desirable, which, in turn, might seem to constitute objections to our argument.³⁷

Our argument does support both these kinds of policy, in that if they were successful our reason for objecting cloning would have much less power. Policies to reduce the supply of potential adoptees are desirable, as long as they deploy only permissible means and do not have undesirable collateral effects.³⁸

Evaluating the second kind of policy is more difficult. We accept that our argument implies that, when adoptees are available, it is better to adopt than to reproduce naturally. We do not see this as a reason to abandon the argument. The argument also supports, other things being equal, policies of encouraging adoption over natural, as well as over assisted, reproduction, up to the point that all potential adoptees find good homes. Other things are not, however, always equal. With the best will in the world some, perhaps many, people who will be entirely adequate parents to children they regard as their 'own' may not be good enough adoptive parents; government policy should avoid prompting

36 Note that for this to be effective, the campaign would have to reach those parts of the world that produce large numbers of potential adoptees

37 For a slightly ironic discussion concerning this consequence, see the exchange between Lindsey Beyerstein and Matt Weiner, one of whom sees the consequence as objectionable, the other of whom sees it as welcome:
<http://majikthise.typepad.com/majikthise_/2004/09/no_really_procr.html>
and <<http://mattweiner.net/blog/archives/000347.html>>.

38 Permissible means would include those we have mentioned, whereas impermissible means would include forcible sterilization and other forms of prior restraint. We have deliberately remained agnostic about the morality of abortion, but emphasize here that if abortion were seriously immoral then a policy of permitting or encouraging abortion would be an impermissible means for the reduction of the pool of potential adoptees.

them to adopt. Governments have a legitimate concern with population policy, in particular with ensuring that each cohort is sufficiently large to maintain the economic, social, and political health of the society, and to mitigate the inter-generational conflicts triggered by uneven generational size. They should therefore be cautious about adopting policies that might have a chilling effect on the fertility rate, when the fertility rate is already low (as it is in most developed countries). Finally, there is an adult-centered interest in maintaining the fertility rate; policies that discourage natural reproduction may reduce it to levels that, though consistent with the social interest in population maintenance, result in some people who would have flourished as parents remaining childless either from a sense of responsibility or through excessive delays in attempting to become a parent.³⁹ Our judgment is that in low-fertility countries discouraging natural reproduction among people who would be adequately good parents is a dangerous policy for governments to adopt, despite the truth that adoption is more virtuous than natural reproduction. Nevertheless, policies such as providing incentives for adoption, and removing some of the barriers to adoption, if they could be designed to minimize the risk that too many children would end up in families which failed them because they had adopted for the wrong reasons, seem legitimate. Similarly, a government might simply take steps to 'normalize' adoption: to try and shift the ethos concerning child-rearing so that adults were less likely to favor natural reproduction over adoption. Of course, it is reasonable to be skeptical that governments could achieve these ends without collateral harms, so we do not advocate specific action, we simply note the complexity of the considerations in play, and indicate that we do not see the observation in play as an objection to our argument.

IV Objections

We have not found any reason for thinking that cloning is wrong. We have, however, found a reason for prohibiting it. The availability of the regime can be predicted, in some circumstances, to damage the funda-

³⁹ Do these reasons for wanting to support the natural fertility rate extend to supporting allowing cloning? We doubt it, because we imagine that if cloning became legally available it would either be limited to a very small number of people who cannot reproduce using other forms of assistance, or almost all instances of it would replace other forms of reproduction. As we explain in the next section, it is possible, too, that its availability and that of other forms of assisted reproduction, may not affect fertility rates positively, or not very positively.

mental interests of some third parties, without serving the fundamental interests of those who clone. Even if reproductive cloning were sufficiently safe that the resultant clones not only could expect to have lives worth living, but had prospects similar to non-cloned human beings, defenders of permitting the practice would have to show that parents had an interest in acquiring genetically connected children sufficiently strong as to outweigh the interests of potential adoptees in finding families. Showing that cloning is not wrong is not enough; they have to show that there is a right to clone, or that very powerful but non-right-generating considerations in favor of cloning outweigh the interest of potential adoptees. We believe this will be difficult.

One objection to our argument is that it provides a reason not only for prohibiting cloning, but also for prohibiting other forms of reproductive assistance, such as IVF and AID, as well as assistance that is less direct, such as the surgical repair of non-health threatening obstacles such as ovarian and testicular blockages, and the reversal of vasectomies. But surely, the objector might say, this is a *reductio* of the argument, because such practices obviously ought to be legal. There is currently high demand for IVF and AID. Many who are in the market for those services experience the difficulty of conceiving as a substantial, even in some cases tragic, obstacle to their ability to flourish in the way they want. Prohibiting those services would, surely, be cruel?

We agree that the reason we give for prohibiting cloning is a reason for prohibiting other forms of reproductive assistance. IVF and AID, for example, help couples to have genetically related children. But those couples already had available to them the option of having non-genetically related children, children who would have existed regardless of what regime was in place with regard to assistance, and who have a fundamental interest in being raised within a family. That constitutes a reason for restricting, or possibly prohibiting, their availability. IVF and AID are now very widespread practices, and in practice a prohibition would probably drive them underground, even if it were feasible. That is an important practical consideration concerning cloning as well. But fundamentally cloning should be regarded as just another form of reproductive assistance.

Two things, then, are worth stressing. First, we believe the argument that we have made constitutes a *reason* to prohibit, not a *conclusive reason* to prohibit. The suffering of the involuntarily childless is a countervailing reason that also has weight. We do not believe that they have a weighty interest in having genetically related children, at least not one weighty enough to trump the interests of existing potential adoptees in finding homes. But relief of suffering is a weighty consideration, and even if an instance of suffering is predicated on the pursuit of an interest which is not itself weighty it is suffering nevertheless, and as such

should be taken into account. So, even in some circumstances where our reason should be given great weight, sufficient to justify banning cloning, the weightiness of the suffering that prohibiting AID and IVF would cause might justify permitting those practices.

Second, the weight that the reason for prohibition has depends on several contingencies. One of these is the extent to which the availability of IVF and AID contribute to the suffering the relief of which counts in their favor. Their availability might contribute to the suffering by inducing women to delay childbearing, by inducing them to believe that artificial techniques will be more effective in restoring their fertility than is in fact the case. Their availability might entrench the belief that there is a legitimate interest in having genetically related children, and thus increase the sense of frustration when that goal is not achieved. Or it might induce women or their partners to blame themselves or their partners for the failure to conceive a genetically related child. It may be that the expectation of the chance to have a child who is a genetic descendent through assisted reproduction is very strongly entrenched, and that, at least in the short term, even if it were possible politically to reduce the availability of such assistance, doing so would cause great and real distress to people whose expectations have developed in a regime of availability. The former thoughts would provide reasons to prohibit it, and the latter would provide a reason not to prohibit it, which applies in the case of those forms of assistance, but not in the case of cloning (because, by hypothesis, people do not have the expectation that they should be able to clone).

We do not know whether or to what extent it does any of this. We don't even know for certain that women delay attempts to bear children at all (relative to before these technologies were available): the rising age of first birth could, in theory, simply reflect more success in an unchanged level of effort to avoid earlier childbirth, or a drastic reduction in the level of fertility due to environmental factors. If so then availability may play little or no role in causing the suffering that the technology alleviates. In this case, the reason to prohibit has less weight. But the facts matter for what weight the reasons have in the circumstances, and the facts (and consequent weights) are probably different for cloning which is not yet legal, than for assistance that is legal and widely available. In short, we are willing to bite the bullet; but we do not think the bullet is as distasteful as some might fear.

A final objection to the prohibition of cloning, IVF and AID for the reason we have given is that it would be unfair to those who cannot reproduce without assistance. It would be unfair, because it would, in effect, impose on them the full responsibility for rearing children who otherwise would have no family. But they played no special role in creating the predicament of those children; they are no more implicated in

it than couples who can reproduce without assistance or people who choose never to reproduce or to rear children. The responsibility for meeting the interests of those children is social, and it is unfair to impose the whole burden on those who just happen to fall into this group.

We agree that it would be unfair, and also we think that the unfairness concerned is a social matter. We have three responses. First, unfairness is sometimes justified. For example, governments typically allow wealthy parents to purchase elite private schooling for their children, giving them an unfair advantage in competitions for the status, income, and other benefits attached to the better jobs in capitalist societies. This unfairness could be justified if elite private schooling played a role in raising the quality of schooling overall or if by enhancing the productive output of the unfairly advantaged wealthy children the practice leads to greater overall social wealth which redounds to the benefit of the least advantaged in society.⁴⁰ So it might be with finding families for adoptees; meeting their fundamental interests may be so important that it justifies some unfairness between those who are at some more abstract level equally and jointly responsible.

Second, if there were a way of getting people to share the burden and still meet the challenge equally well that would be fairer and, therefore, more desirable. But, there are reasons to doubt that this burden can be shared truly equally while being met successfully. What adoptees need are *parents*; people who are unremittingly committed to meeting their individual interests and ready to provide them with unconditional love when young and intensive care as they grow. While this can be done well by people who are subsidized by government, there are real dangers in trying to share the burden equally by, for example, providing the kind of financial incentives that make some people willing to raise the children who otherwise wouldn't be. Having children raised by people who are in it for the money is not ideal, and endangers some of those children.⁴¹ People who want children enough to be willing to seek

40 We assume that something like Rawls's difference principle is more important than something like Rawls's principle of fair equality of opportunity. Rawls does not think so; but see *Justice as Fairness*, 163, n. 44.

41 This consideration also works against the suggestion that people who desire to clone ought to be permitted to do so once they have adopted a child. While money is not the incentive in this case, the prospect of having a genetically connected child is. We should emphasize that there are good reasons for trying to ensure that parents raise children in material conditions that are not excessively challenging, and government subsidies for child-rearing in inegalitarian societies play a very important role in facilitating the success of family life.

assisted reproduction self-identify as people who are more likely than average to be committed to the task for parenting.⁴²

The third response is an observation about how bad the unfairness is. A policy that deprived infertile couples of permission to rear children while permitting fertile couples to do so would be seriously unfair, in our opinion, because it would deprive infertile couples of access to what, for many of them, is a very important contribution to their own flourishing. Such a policy was long in effect in most countries for a segment of the infertile — same-sex couples — and still is in those states that disallow same-sex couples from adopting children.⁴³ Even such serious unfairness could conceivably be justified if there were very powerful reasons to believe that such couples were extremely unlikely to raise children well enough that children would have their interests well enough met in such families.⁴⁴ But it is a serious unfairness because the interest in being able to rear children is a very important and powerful interest. We believe that the interest in being able to have, or rear, a genetic descendent is much less powerful, and is that the unfairness we are considering here is therefore much less serious. If we are wrong about that then the unfairness is much more serious than we think, but we also think that if we are wrong about it then there is a very powerful reason for allowing cloning, independently of the unfairness of disallowing it.

V Concluding Comments

Whereas defenders of cloning have tended to dismiss the arguments against cloning, while elevating the desirability of allowing people to do what they want, several of the arguments against cloning, none of which shows that it is wrong, articulate values with which it is likely to conflict in practice. Against these values there are other values, including the desirability of allowing people to do what they want.

42 It is worth noting that in many countries where IVF and AID are legal an unfairness persists, in that potential parents are required to pay much, or all, of the cost of the treatment, whereas there is no tax on conceiving the natural way. We presume that the same would be true of cloning in many countries if it were legal. Of course, the objector could insist that this unfairness be eliminated too; but if not, he or she admits that unfairness is not a decisive objection to a policy arrangement.

43 Arkansas, Florida, Michigan, Mississippi, Nebraska, and Utah, at the time of this writing.

44 Just to be very clear, we believe that there are no powerful reasons for believing that.

An all-things-considered judgment about whether cloning should be permitted or prohibited, and how it should be regulated if permitted, will consider all relevant values, giving them appropriate weight in the circumstances.

The failure to do this explains why some early commentators on changes in medical technology often sound, in retrospect, hysterical. In an essay written more than a decade after the birth of Louise Brown, the first test-tube baby, James Rachels reflects on the foolishness of philosophers and other commentators who, at the time, predicted disastrous outcomes for her and other test-tube babies.

In 1978 Louise Brown was the first baby to be born as a result of in vitro fertilization. This important event prompted alarmed and highly critical responses from physicians, theologians, and philosophers that are embarrassing to look upon today . . . terrible consequences were sure to follow for the parents, the child and society. But today Louise is a normal, happy, rambunctious child, and so are many others like her.

The recent history of medical ethics is dotted with [similar] episodes in which ethicists have reacted with alarm to new developments, predicting dire consequences that never occurred. Review of these cases suggests caution, lest our quick and easy comments today look silly tomorrow.⁴⁵

Rachels's lesson is that we should be cautious when commenting on the morality of emerging technologies. We draw another lesson, which we are trying to apply here. Rather than seeking, immediately, for a decisive reason to permit (a right) or to prohibit (its wrong) a practice, moral philosophers should engage in a conversation in which they attempt, collectively, to elucidate all relevant values, and to imagine the ways in which a practice would have an impact on the realization of those values. We have attempted to contribute to the first part of such a conversation by identifying in some detail a cost to cloning that has not previously been highlighted (and which is also a cost to other, permitted and widespread practices). In some potential circumstances — say, those in which there is high demand for potential adoptees from high quality potential parents, and in which there is a low supply of children in need of a home — this value consideration would have little weight. In other circumstances it might have a great deal of weight. So we have tried, also, to contribute to the second part of that conversation by conjecturing about the possible effects of permitting cloning. Some readers will find this kind of conjectural thinking frustrating, especially

45 James Rachels, *Can Ethics Provide Answers?* (Lanham, MD: Rowman and Littlefield 1997), 239

given that cloning is as yet far from being sufficiently safe that it would even be ethical to experiment with it on human subjects. But we hope that readers will engage in further conjectural thinking, including by advancing counter-conjectures, so that a fuller picture of the possible effects of the practice in different circumstances and the likely impact on important values can emerge. As we see it the task of philosophers qua philosophers is not to specify exactly what weight a value has in any particular circumstances. It is, rather, to elaborate the value in an appropriate level of detail and to give some guidance concerning the circumstances in which it would have weight, alerting decision-makers to the range of precise value considerations they should take into account when acting.

Received: November 2007

Revised: January 2009

Revised: November 2009