

# The Pathos of the Kass Report

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A Report Issued by the President's Council on Bioethics.

*Human Cloning and Human Dignity: An Ethical Inquiry.*

PublicAffairs. 400 pages. \$14.00

An anticipation of the first report of the President's Council on Bioethics, critics on the left and not a few right-wing libertarians had been sharpening their swords and replenishing their reserves of moral indignation and intellectual contempt. But those who had been eagerly preparing to take up arms against a manifesto of traditional pieties grounded in literary fictions and religious faith should have been sorely disappointed in mid-July, when the council delivered its report to President Bush. In fact, *Human Cloning and Human Dignity* — now appearing as a book, and scrupulously laying bare the moral case for and against human cloning — is an enlightened and enlightening document, and Dr. Leon Kass, chosen last fall by President Bush to chair the council, deserves much credit.

Not the least reason for the report's value is the seriousness with which the council under Kass's leadership took to heart the November 2001 presidential Executive Order that brought it into being, directing the members, first of all, "to undertake fundamental inquiry into the human and moral significance of developments in biomedical and behavioral science and technology," and also "to explore specific ethical and policy questions related to these developments." In responding to this presidential mandate, the council has provided a model of liberal inquiry in the service of the public interest. It has also dramatized the inescapable priority of the good of freedom in our judgments about cloning, as in all of our considered moral judgments and policy prescriptions.

The council chose the ethics of, and public policy related to, human cloning as its first topics of inquiry, and it produced policy recommendations on two issues. All 17 members of the council who cast votes recommended an outright congressional ban on reproductive cloning or, in the report's preferred language, "cloning-to-produce-children." This unanimity reflects both a consensus embodied in the conclusions of previous presidential commissions and the views of a substantial majority of the American people.

Concerning therapeutic cloning or, again in the report's preferred language, "cloning-for-biomedical-research," a majority of 10 members of the council recommended a four-year national moratorium to allow for further study of the moral, political, and scientific issues, and a seven-member minority recommended that cloning-for-biomedical-research be allowed to proceed promptly, subject to strict federal regulation. (Since debate concerning regulatory mechanisms has scarcely begun, however, the initiation of research even under the minority recommendation could take some time.)

There is good reason to suppose that the majority position, which Kass supports, will not carry the day or that should Congress enact a national moratorium of some duration it will be followed by a decision to proceed with cloning-for-biomedical-research. But this political reality only makes the council's exploration of the ethics of human cloning, and the elaboration by the majority of the moral harms threatened by human cloning, all the more significant, for what is politically necessary or unavoidable may nevertheless carry menaces to our moral well-being of which the public should be apprised.

The council got off on the right foot. It is composed of a politically, religiously, and intellectually diverse group of distinguished individuals — six medical doctors, three practicing scientists, four legal scholars, three political scientists, a moral philosopher, and a theologian — many of whom were nominated by Kass (himself an M.D. as well as a Ph.D. in biochemistry), all of whom were ultimately appointed by the president. To be sure, and neither surprisingly nor deplorably, the composition of the council established by a conservative president has a conservative tilt (though not by much: perhaps as many as eight of the 18 members voted for Gore in 2000). More important though is the spirit, liberal in the best sense — generous, open, and devoted to the dignity of the individual while ever aware of the multifarious threats to which that dignity is constantly exposed — that animates the council's report.

The liberal spirit of the report should not be passed over lightly. And not only because rising above the partisan fray is an understandably rare event in Washington. For some time now, getting past politics has been a rare event at our universities, where officially partisanship is supposed to take a back seat to disinterested inquiry. In particular, the report stands in stark contrast to the spirit embodied in the standard operating procedure at university-based centers for the study of ethics and the professions, the primary sites in the country for the study of the morality of biomedical research. Typically these centers lack, seemingly with a clean conscience, intellectual diversity: You would be hard pressed to find among the top programs on professional and practical ethics more than a token conservative among the year's visiting fellows or on the faculty advisory committees.

However, in the effort to understand complex questions where science, morals, and politics converge, intellectual diversity is not merely an ornament, as the Kass report illustrates. A many-sided inquiry is indispensable to the achievement of a correct grasp of a many-sided issue. Indeed, it is thanks to the council's commitment to air and to address opposing opinions that the pathos of the majority position comes into focus.

On one hand, a majority of council members supports the four-year moratorium on embryonic stem cell research because of the variety of threats it believes such research poses to the moral preconditions of human freedom. On the other hand, the freedom whose moral preconditions the majority wishes to protect is on a collision course with the restrictions embodied in the moratorium.

Indeed, the quest for a moratorium, as well as for many of the federal regulations that will be designed to permit such research while keeping it within limits, will very likely prove incompatible with and eventually fall before the very freedom to inquire, the freedom to improve our condition, and the freedom to master our world that liberal democracy in America secures, and the hunger for ever more of which it steadfastly encourages.

The case of cloning-to-produce-children was a relatively easy one for the council, because the members did not find that it presented any serious clash of competing goods. What united the council members in voting to ban such cloning altogether were concerns about the consequences that flow from “the idea of designing and manufacturing our children.” While recognizing the claims of parents’ freedom to choose and the claims of parents’ happiness or well-being, the council members concluded that cloning-to-produce-children “is not only unsafe but also morally unacceptable.” Cloning human children will of necessity involve using human beings as “experimental guinea pigs for scientific research,” requiring much trial and error; experimentation that has already been performed with animals suggests that a huge percentage of deformed fetuses and severely impaired viable babies would result. Moreover, cloning children will encourage parents to see their children as a function of their deliberate choice and will, rather than as independent beings arising as a gift from a man and a woman freely giving themselves to each other in love. It will deprive the cloned children of the sense of a unique identity and individuality. It will create treacherous family dynamics because a child that is cloned with the cells from one of his or her parents will have a vivid biological tie to that parent (its genetic double) and no genetic tie at all to the other. And through its endorsement in law of the design and manufacture of children, the cloning of children may well put society at risk by coarsening our sensibilities and inclining us to transfer even more terms and styles of thinking and ways of judging drawn from production and commercial life into the realm of intimate relations.

The case of cloning-for-biomedical-research, however, was a hard one for the council, and with excellent reason. Whereas the benefits supposedly yielded by cloning-to-produce-children are at best ambiguous, the potential benefits of cloning-for-biomedical-research — alleviating suffering by developing a variety of treatments for degenerative diseases that ravage millions of Americans — are a great good. And whereas the costs of cloning-to-produce-children seem unacceptably high to nearly everybody, the costs of cloning-for-biomedical-research are intensely controversial, revolving around the moral status of the cloned human embryos that are destroyed in the process of extracting from them the versatile stem cells, which have the potential to develop into any sort of cell in the body.

Indeed, the most important divisions on the council and perhaps in the debate over human cloning as a whole spring from questions about the moral status of the cloned human embryo and the consequences for our moral sensibilities of routinizing and legalizing their production and destruction. Appropriately, the council’s report highlights these divisions and explores them from several angles.

On one end of the spectrum, where many scientists seem to reside, is the view that the cloned human embryo “should be treated essentially like all other human cells,” and hence is deserving of no more respect than any other microscopic particle. For those who hold this view, embryonic stem cell research presents no moral dilemmas, and therefore it follows that research should proceed forthwith. On the other end of the spectrum, where many pro-life conservatives stand, is the view that a human embryo, however it came into being, is deserving of the same respect and rights as a fully developed human being. For them, too, the moral issue is uncomplicated by consideration of other goods: Since it is immoral to create and then destroy a human being for the benefit of another, cloning-for-biomedical-research should be banned immediately and permanently (and indeed is in a sense worse than cloning-to-produce-children, which at least aims to bring a human being into existence, not to harvest certain parts of a developing human life and then discard it).

In the middle are those who believe that the human embryo, a human being in the very earliest stages of development, is deserving of heightened respect, but less respect than a human being at later stages of development, say a fetus or a viable baby or an adult human being. And they believe that policies that implement systematic disrespect for developing human life are likely to have consequences for how fully developed human beings come to think of themselves and others. Unlike those who see no moral obstacle to the use and destruction of human embryos on one hand, and unlike those who see an insuperable moral obstacle to such use even for a good cause on the other hand, those who attach “intermediate and developing moral status” to the embryo face a stiff challenge in formulating policy. For not only must they give some content to the in-between sort of respect they believe is owed to nascent human life, they must also balance that good and its implications against other competing human goods.

Some council members who accord heightened moral respect to human embryos nevertheless joined the minority and favored proceeding with research without delay, on the grounds that what is owed to the millions who suffer debilitating diseases overrides what is owed to the human embryos. And they discerned no serious harm to a society as a consequence of legitimating and routinizing the systematic production and destruction of the life embodied in human embryos.

Other council members who accord heightened moral respect to nascent human life voted with the majority in favor of the four-year moratorium on research. They believe that the potential of making discoveries that may reduce suffering and cure disease is, at this moment, outweighed by the combination of several considerations: the respect that is owed to developing human life; the need to debate and design effective regulatory mechanisms before research on cloned human embryos begins; and the need to prevent the moral harm to society that would result from further undermining our shared sense, under siege from many sides, that human life must not be reduced to manufacture and marketing. Nevertheless, the

moratorium for which they call, far from embodying final conclusions about what is to be done about cloning-for-biomedical-research, reflects their conviction that more thought and discussion is urgently needed before national policy is set.

The essential liberalism of the council's report has been lost on many critics. Most alarmingly, despite the measure with which the council's arguments are put forward, some liberal critics have been determined to depict Kass as a reactionary moralist and to dismiss the majority position he joined as utterly devoid of merit. Prominent among such critics is Dr. Jerome Groopman, who last winter published a mocking critique of the council's first public meeting in the *New Yorker* ("Science Fiction," February 4, 2002), suggesting that in the debate over cloning Kass was bent on substituting literary fiction for scientific fact. More recently, this summer in the *New Republic* ("Holding Cell," August 5 & 12, 2002) Groopman found that the council's majority recommendation calling for a four-year moratorium on biomedical cloning confirmed his initial perceptions: "It shackles lifesaving research and provides no clear framework to advance the ethical debate. What's more, the arguments deployed on its behalf don't withstand scrutiny."

In fact, it is Groopman's scrutiny that does not hold up. To the majority's argument that cloning for biomedical research involves terminating a "nascent human being," Groopman replies that an early stage human embryo, a zygote, "is crucially different" from other types of "vulnerable human life" because lacking organs or a nervous system, it "cannot receive any form of stimulation related to the senses, cannot perceive or cogitate, and thus cannot be hurt or suffer." This is a valuable observation, but its reach is uncertain and its implications are unclear. That the human embryo in its earliest stages is different in an important respect from developed human life does not mean that it is different in all important respects. That it cannot be hurt or suffer does not distinguish the developing human embryo from a sleeping person, who can be killed painlessly in his sleep by a variety of means. And it is silly for Groopman to argue that since the majority thinks the reason for protecting the embryo is that "the embryo's human individual genetic identity is present from the start," therefore the majority is committed to the conclusion that "no human cell could ever be discarded." While every cell contains the individual's unique genetic identity, only the embryo, when permitted to follow its natural course of development, grows into a human being. Finally, Groopman simply fails to move beyond the question of the *rights* of the developing human embryo to address the question of the *consequences* for us as members of a society in which nascent human life is used as a resource. By the way, this latter question about the effects on our humane sensibilities of the use and disposal of human embryos is an empirical question. That such effects may be difficult to measure does not transform them into metaphysical questions or render them irrelevant to disputes about public policy.

Groopman also finds no cause for concern regarding the majority's fear that cloning for biomedical research will create a slippery slope that will inevitably lead to the reproductive cloning that all members of the council oppose as well as to the production of embryonic and even fetal organs for therapeutic purposes. To this he counters that "there is always a slippery

slope,” and that all scientific advances bring with them dangers and the possibility of abuse. True enough, but this hardly disposes of the matter. While there is always a slippery slope, some slopes are more slippery than others. Moreover, that we have effectively regulated previous scientific breakthroughs does not prove that the dangers inherent in new scientific breakthroughs will be equally subject to effective regulation. As the fine print on the mutual fund ads correctly states, past performance is no guarantee of future success. Yet Groopman proceeds as if the answer to the question of whether we can effectively regulate cloning for biomedical research is readily knowable in advance of investigation.

Why does Groopman, who professes devotion to the facts, overlook or attempt to answer without investigation key empirical questions posed by the majority? Perhaps it is because his objection to the majority position is not really empirical but based on an unexamined faith in progress and enlightenment.

Indeed, the alacrity with which he seeks to expose what he takes to be the Kass report’s irreducible religious foundations both disguises and reveals Groopman’s own faith. Groopman insinuates that the Kass majority sought to conceal the real foundation of its argument against cloning:

The report studiously avoids mentioning religion — perhaps to preempt charges that theology undergirds the anti-cloning case — but in so doing, it overstates the possibility for moral compromise. For many Americans, theology is central to their opposition to therapeutic cloning. Four years from now the theology of the Vatican or of evangelical Protestantism is unlikely to be revised. Science will not produce data on when the soul appears, because this is a metaphysical question not amenable to experimentation; thus those who believe a cluster of cells from a manipulated egg represents sacred human life will have nothing new to consider. The council seems to anticipate new, nontheological ethical insights that will transform the cloning debate. But the report itself comprehensively delineates the secular moral positions, pro and con. It is hard to imagine new ethical insights from further debate or discussion that will turn minds one way or another, producing the “public consensus” the council’s majority seeks.

In fact the report does not mention religion because, contrary to Groopman’s suggestion of a cover-up, the majority position does not rely upon it. No more at least than does any position that begins from the premise that human beings are by nature free and equal, and that our politics should protect the rights we share in a manner consistent with those rights.

Notwithstanding Groopman’s allegations, it is he who averts his glance from and seeks to cover up the hard empirical questions. And it is Groopman who proudly proclaims his refusal to tolerate compromise: “The council’s moratorium is indeed a compromise — too much of one. It is a compromise of faith in our society’s ability to regulate itself.” Groopman’s unexamined faith in effective regulation, which he refuses to compromise to the extent of shielding it from empirical investigation, reveals itself to be the theological underpinnings of

the pro-cloning case. As can happen with faith-based arguments, the zeal with which Groopman holds his blinds him to the merits of the arguments on the other side of the question.

One should not make too much of the council's majority recommendation on cloning for biomedical research. Government of course must take action, and the decision not to act or to postpone a final decision is certainly an action fraught with consequences. But the council's report does not carry the force of law. It is not a judicial decision. Nor is it a draft bill. It is an advisory study. It carries the force of argument. The recommendation to impose a moratorium on cloning-for-biomedical-research may not prevail. However, if such cloning is permitted, the forceful articulation of the moral dangers associated with it may serve to make regulation more respectful of the claims of human dignity than they might otherwise have been.

In the end, perhaps the most enduring argument the report makes, both explicitly and in practice, is for the value to public debate of liberal deliberation. Indeed, if the president, members of Congress, interested citizens, and not least our academic ethicists allow themselves to be instructed by the council's report, they could help maintain the nation on the right path in the debate about human cloning, helping us to avoid the error that for so long hampered the debate over abortion, which was the refusal by both camps to grasp the good that lay on the other side of the question.

At the same time, the most enduring argument the report does not make but which it quite vividly dramatizes is the primacy of our commitment to freedom, and the tension between our demand for ever more of it, and the maintenance of the moral preconditions that enable us to use our freedom wisely. Freedom, of course, is a great good. The extension of equality in freedom to an ever broader spectrum of citizens is our nation's outstanding achievement. However, as no debate before it, the debate over human cloning throws into sharp relief the question of freedom's limits; and the extent to which progress in the freedom to inquire, to improve our condition, and to master our world pose threats to freedom; and whether, even if the extension of freedom threatens freedom, we can limit freedom in a manner consistent with the principles of a free society.

We owe Leon Kass and the President's Council on Bioethics that he chairs a debt of gratitude. It is not only that *Human Cloning and Human Dignity* clarifies the human significance of the questions raised by, and the clash of goods implicated in, the awesome new powers scientists have developed to create human life. In addition, the council's report provides a sterling example of the political benefit in a free society that comes from scholars who address urgent and weighty ethical questions and policy options governed not by narrow partisan interest but by a broader conception of the public good and the imperatives of intellectual integrity.

