THE HUMAN CLONING ERA
ON THE DOORSTEP TO OUR POSTHUMAN FUTURE

- MATTIAS JOHANSSON -
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Centre for Applied Ethics
Linköping University
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Supervisor: Prof. Bo Petersson, Linköping University
Human reproductive cloning came to the public’s attention when Dolly the sheep was cloned in Scotland in 1997. This news quickly spread around the world causing both excitements at the possibilities of what cloning techniques could offer, as well as apprehension about the ethical, social and legal implications should human reproductive cloning become possible. Many international organisations and governments were concerned about the impact of human reproductive cloning on human health, dignity and human rights. To this day, many institutions have drafted resolutions, protocols and position statements outlining their concerns.

This paper outlines some of the major ethical issues surrounding human reproductive cloning and the position towards this novel technique taken by three important international organisations – Council of Europe, World Health Organization, and United Nations Education, Scientific and Cultural Organization - expressed in different regulatory frameworks.

Proponents of human cloning occasionally point out that cloned humans are already among us in the form of twins - people with identical sets of DNA - so what is the problem? Besides avoiding the fact that natural twins are always siblings, whereas a clone could be the twin of a parent or grandparent, this observation ignores a crucial moral difference: natural twins arrive as rare creations, not as specifically designed products. Instead of being an uncontrolled, self-regulated evolutionary process, creation of man through reproductive cloning are shifting from being natural to a state of instrumentality where parental interests constitutes what is important. This shift will inevitably lead to the child being a means for some other end (parental interests). However, this is not the same as being subdued into genetic determinism, but the point brought forward is the child’s lack of freedom caused by the interests of the parents. In this sense the clone’s genome constitutes a heavy backpack because of our pre-knowledge of its physical building blocks – or in other words its potentiality. Even though the argument of genetic determinism is a weak one, our subconscious “forces” us to create hopes upon the child because of its potentiality. No longer is the evolution the creator with the dices of randomness. A new gambler is in town and this time the dices are equilateral.
The Times They Are A-Changin’
Come senators, congressmen,
Please heed the call.
Don’t stand in the doorway,
Don’t block up the hall.
For he that gets hurt
Will be he who has stalled.
There’s a battle
Outside and it is ragin’.
It’ll soon shake your windows
And rattle your walls,
For the times, they are a-changin’.

The line it is drawn,
The curse it is cast.
The slow one now will
Later be fast,
As the present now
Will later be past.
The order is rapidly fadin’.
And the first one now
Will later be last,
For the times, they are a-changin’.

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Finally, I would like to express my sympathy with all of you out there in the same situation as I am in. Certain days seem eternal with in-depth studies and notion of time and space strangely dissolve. Time is a physical phenomenon being only a tape at the end of the journey. But, my friends, do not miss out of the wonderful things that is life. Do not mistake life for 20 weeks of writing frustration and anxiety. Enjoy the small things in life; love, the stars above, warbling birds, and flowering trees. Carpe Diem!

Abstract

Human reproductive cloning came to the public’s attention when Dolly the sheep was cloned in Scotland in 1997. This news quickly spread around the world causing both excitements at the possibilities of what cloning techniques could offer, as well as apprehension about the ethical, social and legal implications should human reproductive cloning become possible. Many international organisations and governments were concerned about the impact of human reproductive cloning on human health, dignity and human rights. To this day, many institutions have drafted resolutions, protocols and position statements outlining their concerns.

This paper outlines some of the major ethical issues surrounding human reproductive cloning and the position towards this novel technique taken by three important international organisations – Council of Europe, World Health Organization, and United Nations Education, Scientific and Cultural Organization - expressed in different regulatory frameworks.

Proponents of human cloning occasionally point out that cloned humans are already among us in the form of twins - people with identical sets of DNA - so what is the problem? Besides avoiding the fact that natural twins are always siblings, whereas a clone could be the twin of a parent or grandparent, this observation ignores a crucial moral difference: natural twins arrive as rare creations, not as specifically designed products.

Instead of being an uncontrolled, self-regulated evolutionary process, creation of man through reproductive cloning are shifting from being natural to a state of instrumentality where parental interests constitutes what is important. This shift will inevitably lead to the child being a means for some other end (parental interests). However, this is not the same as being subdued into genetic determinism, but the point brought forward is the child’s lack of freedom caused by the interests of the parents. In this sense the clone’s genome constitutes a heavy backpack because of our pre-knowledge of its physical building blocks – or in other words its potentiality. Even though the argument of genetic determinism is a weak one, our subconscious “forces” us to create hopes upon the child because of its potentiality. No longer is the evolution the creator with the dices of randomness. A new gambler is in town and this time the dices are equilateral.
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PART I

1 - Introduction

“All beings so far have created something beyond themselves; and do you want to be the ebb of this great flood and even go back to the beasts rather than overcome man? What is the ape to man? A laughingstock or a painful embarrassment. And man shall be just that for the overman: a laughingstock or a painful embarrassment. You have made your way from worm to man, and much in you is still worm. Once you were apes, and even now, man is more ape than any ape.”

Friedrich Nietzsche, Also sprach Zarathustra, 1897.

Increasingly the world is described as, and is becoming based on and dependent on modern science¹ and technology. Yet this is nothing fundamentally new; science and technology are central elements in modern Western culture’s self-understanding and self-interpretation processes. Science and technology have played an active part in forming industrial society’s relationship with nature, other people and cultures.

Modern science and technology are becoming increasingly more involved and integrated within political structures and financial institutions, as well as in our everyday lives and activities, in a cultural threatening life on earth. This poses a challenge to science and technology to be more than suppliers of solutions, and to participants in research complexes to be more than “helpers” and experts. In 1991 the Oslo conference on “Humanistic Perspectives on Technology, Environment, and Development” drew researchers from many countries to look at the social and cultural bearings of the global environmental and developmental crises, focusing particularly on the roles of science and technology in these processes. The conference report found that,

“[o]ne of the conclusions to be drawn from the discussions at the conference was that we as participants in the research complex and the technological communities of the North, must

¹ If nothing else is mentioned, science is referred to as natural science.
seek alternatives and create projects for change in our part of the world – and recognise ourselves also as part of the problem and not only as producers and suppliers of solutions.  

In a time of challenge to the authority and legitimacy of science and technology as sources of safe knowledge and solutions for the distress and sufferings of the world, it is of the utmost importance to understand the role of biotechnology, which gives rise to such immanence hopes and fears, in cultural and political projects.

Modern science and technology have been regarded as unambiguously progressive, necessary and neutral means for realizing undisputed political objectives such as growth, progress and development in the past century. Science and technology have been treated as suppliers of solutions, their managers and operatives as “helpers” and experts. The relationship between modern science and technology and questionable developments in the social, cultural and natural environments in which we live has been much debated and problemized in the last couple of decades. The burdens imposed by technological development on social, political and natural environments have been known right from the early phases of industrialisation, but were assessed as secondary effects or passing phenomena, which future technological and scientific development was supposed to overcome. In the modern Western culture we have pinned our hopes on and invested our trust in science and technology, despite the uncertainty of their working to our advantage and delivering solutions to our problems.

The need to regard the developments in biotechnology as problematic, whether it is in the food industry or in medicine, is important. This demands attention from scientists, science critics, and activists in environmental movements, politicians, bureaucrats and the public everywhere. Until recently, however, scientific inquiry has been understood, from within itself, to demand freedom and the absence of control. Science is supposed to bless us most when we leave it alone. The same liberty is demanded by industry and markets for their technological development. But biotechnology is not, and cannot be, just some scientist’s business – nor even the business of some professional in the field of ethics. By no means should decisions on biotechnology research and development be left to markets, profit factors and industry. These need to be guided by openness and transparency. Objections towards this development have been raised through the last century by thinkers like Bertrand Russell and Georg Henrik von Wright. But this criticism, what I prefer to call the intellectual dialogue, has been remarked. This dialogue has been exclusively kept within the intellectual sphere and not in the society as a whole. History reveals the fact that science has been a protected business with very little insight from the outside - that is

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3 The publics sphere refers to society in general (politics as well as citizens in general) if nothing else is mentioned.
society. Exactly this darkroom mentality is the origin of the contemporary scepticism among the public towards certain scientific developments.\textsuperscript{4} It is important that everyone that works with biotechnology and implement it have a humble attitude and recognizing that there are a lot of things, which we still do not know about possible risks about biotechnology.

\textbf{1.1 - The Current Challenge}

In 1971, James D. Watson, co-discoverer of the double-helix structure of DNA, issued a call for a public debate on the ethics of human cloning. With the recent developments in the international scientific community and its efforts to clone\textsuperscript{5} human beings, his call is finally being heeded. But as Watson realized, technological advances in cloning and genetic manipulation challenge our most dearly held assumptions. The debate about human cloning is a debate over nothing less than what it means to be human. The science of genetics, realized through technologies such as cloning, will have a tremendous impact on cultural conceptions of human nature. This debate, its implications, and its consequences are likely to be much the same as those that raged over Charles Darwin’s \textit{The Origin of Species} more than 140 years ago.

Cloning technology presents humanity with the very real possibility that it may one day control not only its destiny but also its origin. Human cloning allows man to fashion his own essential nature and turn chance into choice. For advocates of cloning, this is an opportunity to remake mankind in an image of health, prosperity, and nobility; it is the ultimate expression of man’s unlimited potential. For their detractors, human cloning and genetic manipulation intrude upon the profound nature of the inherently unknowable; they represent the bottomless depths of human arrogance and irresponsibility.

The biotechnology company Cloneaid claim to have created the first cloned baby to members in the religious sect Raelians, who believes man is created by aliens. They, furthermore, claim that two more cloned babies have been borne since the first baby was delivered in January 2003. But this is, however, highly doubtful since they refuse anyone to DNA-test the babies. And a late study actually shows it might be impossible to clone human beings. In an issue of \textit{Science} we can read that a scientific research team has encountered problems because of fundamental flaws in the development of embryos with

\textsuperscript{4} If you are interested of reading more about the relationship between science, and especially biotechnology (GMOs), and the growing public scepticism see my earlier work on this: Johansson, M., \textit{Beyond Ignorance – Understanding the Conflicts In the Discourse of Genetic Engineering}, Department of Thematic Studies, 2001.

\textsuperscript{5} If nothing else is mentioned this paper refers to “reproductive” cloning. For a deeper explanation on this see chapter 2 concerning cloning techniques.
techniques currently used to clone cells.\textsuperscript{6} The study showed that cell division was abnormal when four different techniques for nuclear transfer were used to clone primate cells. Their conclusion is that, with our present knowledge, it is impossible to clone primates, including human beings. These findings contradict, with our present knowledge about the practical implications of human cloning, claims made by Clonaid that they have cloned several babies.

But this, however does not change the importance of extensively scrutinize the developments in biomedicine, and especially the progress in cloning. This is important because cloning technology could theoretically be applied to clone humans. The media have created something of a “moral panic” out of the prospect of cloning individuals either from desires for immortality or for eugenic purposes, for example, to create so-called “designer” children. The typical institutional response to this “moral panic” has been to demand a ban on all human cloning. Thus, the political leaders of forty member countries of the Council of Europe have called unanimously for a ban on “any intervention seeking to create a human being genetically identical to another human being, whether living or dead”.\textsuperscript{7} Organisations like UNESCO (United Nations Education, Scientific and Cultural Organization) and WHO (World Health Organization) holds a similar view banning cloning on human beings on moral grounds, especially for considerations of human dignity.\textsuperscript{8} But why this instant legal action in prohibiting human cloning? What is it that makes this so widely discussed, more often than not, in moral terms? This is what this paper is all about.

\section*{1.2 - The Aim of the study}

The point of departure for this essay is to discern the key features at the heart of the concept of human rights and human dignity in order to understand what it means to possess these. It is important to understand what it means to be human in the face of human cloning, which has the potential of raising immanent fears and questions of what is human and what is not.


\textsuperscript{8} Since then many European and other countries have passed legislation banning human reproductive cloning, including Australia, Austria, Argentina, Belgium, Brazil, the Czech Republic, Costa Rica, Denmark, France, Germany, India, Israel, Italy, Japan, Lithuania, Mexico, the Netherlands, Norway, Peru, Portugal, Romania, Russia, Slovakia, South Africa, South Korea, Spain, Sweden, Switzerland, Trinidad and Tobago and the United Kingdom. As of March 2002 approximately 33 countries have formally banned human cloning. See Database of Global Policies on Human Cloning and Germ-line engineering, (Online), URL: \url{http://www.glphr.org/genetic/genetic.htm}, April 20, 2003.
In relation to this, the all-embracing goal is to analyse the potential implications posed by human cloning\(^9\) in our society and how our understanding of human rights- and dignity, in various international legal documents, can guide us in human cloning’s be or not to be. In order to do this we need to clarify the concept of human rights and also the discussion concerning the relation between human cloning and human rights- and dignity. I will look at three organisations and their regulation of human cloning – the World Health Organization (WHO), Council of Europe, and UNESCO.

To make this more comprehensible we can split the somewhat broad aim into two objectives: the theoretical objective and the empirical objective. In the former the objective is to analyse the concept of human right and human dignity itself on a more abstract level. That is, on a philosophical level. For this purpose I have chosen to use a Kantian perspective, and especially his \textit{categorical imperative} as a strong moral instrument. This will help us understand if and why concepts like human rights and dignity is worth our protection.

As far as the empirical objective is concerned the starting-point will be the evolution of human cloning techniques and how it can be applied. Furthermore, we will look at the most important documents, on the contemporary international level, concerning human rights- and dignity, and especially documents dealing with human cloning.

As was mentioned above, the discussion around the relation between human cloning and human rights- and dignity will also be presented. I will, in this paper, use this harsh debate between those in favour of human cloning and those in opposition as a background to enclose my discussion and strengthen the theoretical- and empirical objective.

In the light of this, five explicit questions will serve as tools in this essay in order to investigate both the theoretical- and empirical objective:

- What are human rights and human dignity, and how should they be understood?
- What is the outlook on human rights and human dignity in the international legal context?
- How can we understand human cloning in the face of human rights- and dignity and what implications can human cloning potentially pose to our society?
- How does our mere knowledge about cloning, and our knowledge put into practice, affect our conception of human nature?
- What is the nature of the values that fuel the developments in human cloning technology and what is the nature of the values that hamper this development?

\(^9\) This paper concentrates on the applied ethics of cloning a human being for the purpose of producing a child, or children, in a family. There is not the scope to deal with the moral issues surrounding the use of embryo stem cells for therapeutic cloning, which may result in the growth of specific organs or tissues.
1.3 - A Journey from the Abstract to the Tangible

I would call the practical method in this study as a kind of “normative-deductive” method, in that I have an understanding of the reality corresponding to certain philosophical writings concerning human rights and human dignity. This can be compared to a deductive method, in where the procedure is to go from the general (universal/abstract) to the individual (specific/tangible). This means that when you conduct a deductive study, you view the empirical material in relation to the broader context that encloses it (the theory). Using this methodology demands knowledge about the field of investigation. The point of departure for the deductive method is therefore a fixed frame of understanding, which means that when you interpret concrete experiences in every day life, or predict certain relations from out a fixed frame of understanding, you make a deductive conclusion. Let us say that a deductive method contains of four levels – theory, hypothesis, observation, and confirmation. In order to conduct a “true” deductive reasoning we need to go through all of these stages. However, in my normative-deductive method, I simply ignore level two being the hypothesis. This is to say that I am not using a hypothetic method in were a hypothesis is brought foreword in order to retain or reject it in the end. Human rights are important and there are no reasons to investigate otherwise, but instead to view the relationship between human rights, human dignity and human cloning in a spirit of applied ethics.

The reader should thus understand, before entering this essay, that I have a strong normative notion that human rights are important to us. Consequently, human rights are something that we value and are anxious to protect. The next step is to investigate why this is so and what human rights are – what makes it so important to protect. Then, we need to apply the same methodology in the case of human cloning in order to understand what it is and how we apprehend it. Now, and only now, we can view human cloning in a context of human rights and either rule out this technology as a violation of human rights and thus not a desired development, or we can determine that this does not violate any basic human rights principles and therefore a technology that cannot be ruled out, at least not on the basis of violation of human rights.

A window of critique that can arise in the deductive methodological choice is that you mould the reality to fit the theory. The problem between reality and theory, however, can be overcome by self-reflection and critical reflection over the empirical material, which is used. Hence, only by recognizing this, by taking a critical spirit, the results will be an

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10 As opposed to an inductive method that use the reverse methodology; from the individual to the general. You start by observing single experiences and from that make generalisations.
honest marriage between empiri and theory. Kirkeby writes that “critics mean that since you know the theory, a deductive study cannot give us knowledge that is qualitative new.” What we do now, however, is that the connection between theory and empiri give us certain knowledge. And discussions whether there are methods for knowledge accumulation that can give us new knowledge will not be discussed here. But the ambition, however, is to present new knowledge in the relation between human rights, human dignity and human cloning and to problemize the developments of human cloning in relation to this. If we can prove that human cloning \textit{de facto} violates some basic human rights principles, then I would say that this qualifies as “new” knowledge.

\subsection*{1.3.1 - Why Kant?}

In this paper, I will use Immanuel Kant’s moral philosophy as the off-shout ramp in general and his categorical imperative in particular. The strength in Kant’s thinking is the emphasis on what is morally good. The focus is here on the goodness of the intention, as opposed to utilitarian theories that focuses solely on the consequences. Kant thought that since our practical reason is better suited to the development and guidance of a good will than to the achievement of happiness, it follows that the value of a good will does not depend on the results it manages to produce as the consequences of human action. This deontological theory is very strict since it tells us that actions are morally right, in virtue of their motives, if they are derived from duty. And since we regard human rights as being important to respect and protect, anything contradictory to this must be forbidden. Thus, with Kant’s moral philosophy, we have a fruitful tool for understanding man and our moral obligations towards each other.

One can discuss the validity of using Kant and his moral philosophy in relation to contemporary developments in human cloning. A possible criticism could be that he never had to reflect over the same kind of technology, with its potentiality of rocking the very foundations of how we understand ourselves, which we are facing today. However, this depends on how you intend of using Kant’s thinking. If the intention would be to understand human cloning, this would surely be a difficult task. But my intention is quite another. It is simply to understand the essence of the human being and consequently derive our moral obligations from our cloning of human beings.

In the next section there will be a brief presentation of the chapters and its contents.

1.4 - The Outline of the Study

This study is divided into seven chapters, which are organised in three parts. After this introductory chapter a presentation of the techniques involved in cloning will be established in chapter 2, followed by the theoretical objective in chapter 3. The empirical analysis is thereafter carried out in chapters 4-5. And last, but certainly not least, I will be presenting you the vital discussion in chapter 6, followed by my final remarks in chapter 7.

In chapter 2, called *A Short Cut to the Future*, I will briefly present the historical developments within cloning ever since the beginning of the last century up to recent date. This is followed by a short presentation of the cloning techniques in section 2.2 – *The Techniques of Cloning*, divided in two parts concerning reproductive (2.2.1)- and therapeutic cloning (2.2.2). In section 2.3, named *Why we Should Feel Anxiety*, I lay out to camps of objections – religious (2.3.1)-and utilitarian ones (2.3.2) - towards human cloning in order to frame the importance of having a constructive dialogue concerning this reproductive technology’s *raison d’être*.

Chapter 3, titled *Being Human*, presents the theoretical framing mainly from out Immanuel Kant’s moral philosophy. The objective in this chapter is to analyse the essence of what it is to be human (section 3.1), and what human dignity is all about (section 3.2).

The topic in chapter 4, entitled *The Great Divide: The Morals Clash within Human Cloning*, is to illuminate the broad debate whether human cloning is worthy its existence or not. Both of the standpoints will be presented in order to frame the vast interests and moral believes that surround human cloning.

In chapter 5 - *Human Rights and Human Cloning*, I will analyse the main legal instruments dealing with human cloning originating from three sources: Council of Europe (section 5.1), UNESCO (section 5.2), and World Health Organization (section 5.3).

Chapter 6, called *To Be or not to Be – That is the Question*, contains the essential discussion in where I, based on the earlier chapters, establish whether human cloning violates human rights- and dignity or not. We will discuss whether this development is to be welcomed or if we should take precautions and banish this spearhead in human technology, being undesirable.

I conclude this paper in chapter 7, titled *Epilogue*, in where I bring forward the main conclusions from the discussion in chapter 6.
2 - A Short Cut to the Future

“Human history is created by intentional activities but is not an intendent project; it persistently eludes efforts to bring it under conscious direction.”


In order to know what to think about the cloning of humans, we must first understand the science of cloning. In order to do this we must ask some questions: What is cloning? How did it come about? What is now possible? For what purposes are human cloning developed?

2.1 - On the Road to Dolly

In biology, the noun “clone” refers to a cell or an organism that is genetically identical to another cell or organism from which it was derived. For example, some organisms (like bacteria) reproduce themselves by copying their DNA and then splitting in half. The two resulting bacteria are thus clones. The verb “clone” refers to the process of creating cloned cells or organisms. The beginnings of what we today refer to as cloning actually goes back to the early part of the twentieth century - 1901 to be exact. Hans Spemann (1869-1941) was a German embryologist who was a professor of zoology (1919-1935) at the University of Freiburg. In 1901, he split a 2-cell newt embryo into two distinct parts, successfully producing two different larvae. In 1914, he conducted the earliest known experiments on nuclear transfer. By using a tiny strand of baby hair, Spemann partially constricted a newly fertilized egg (zygote), thereby forcing the nucleus to one side of the cell and the cytoplasm to the other side. As the nucleus side of the cell began to divide into a 16-cell stage, the nucleus slipped over to the cytoplasm on the other side. Cell division began on this side too, and the hair knot was tightened to prevent any additional nuclear transfer. Twin larvae developed, with one side (the side with the initial nucleus) being slightly older than the other (the side with the initial cytoplasm). This proved that the nucleus from a 16-cell stage could direct the growth of another larva. From his observations, Dr. Spemann proposed removing the nucleus from an unfertilized egg and replacing it with the nucleus from a fertilized cell. In fact, he did just that, and used the nucleus from a 16-cell salamander embryo to create an identical twin. By transplanting embryonic tissue to a new location
within the embryo (or to another embryo entirely), he was able to identify the agency that
governs the growth and differentiation of cells. He received the 1935 Nobel Prize in
Physiology or Medicine.\textsuperscript{14}

During the early 1950s, F.C. Steward of Cornell University demonstrated how to clone
plants, and produced carrots by the thousands via his procedure.\textsuperscript{15} In 1952, Robert Briggs
and Thomas King of the Institute for Cancer Research in Philadelphia cloned a leopard frog
using body cells from frog embryos, but allowed the organisms to live only to a tadpole
stage.\textsuperscript{16} Since then, carrots, tomatoes, fruit flies, and numerous other plants and animals
have been cloned.

Then, on April 25, 1953, James Watson and Francis Crick published their scientific
paper describing for the first time the intricacies of the double-helical structure of the DNA
molecule.\textsuperscript{17} For this attainment, they were awarded the 1962 Nobel Prize in Physiology or
Medicine - and initiated a biological revolution. The elucidation of the molecular structure
of the gene clearly ranks among the grandest scientific achievements of all time. As a result
of their discovery, a new age has dawned - the Genetic Age. Prior to this discovery, many
scientists viewed the Nuclear Age as the last great revolution in science. Nuclear
technology tends to be viewed as either the most powerful industry for human benefit, or
the most dangerous tool for human destruction ever available for mankind’s use. With the
development of genetic engineering, the potential for controversy is even greater because in
their experiments, researchers no longer are dealing with merely inanimate nature, but with
human subjects, and the consequences are far-reaching indeed.

The same year that Watson and Crick were awarded the Nobel Prize, John Gurdon of
Oxford University cloned sexually mature frogs from the intestinal cells of adult frogs. A
year later, in 1963, British scientist J.B.S. Haldane first employed the word “clone” (Greek
for “twig”) to describe Gurdon’s frog experiments.\textsuperscript{18} Three years later, Gurdon and
Uehlinger succeeded in growing an adult clawed frog from an injection of a tadpole
intestinal cell nucleus into an enucleated oocyte (which, unlike Briggs’ tadpoles, was
allowed to grow into an adult), thus representing the first cloning procedure that resulted in
an adult vertebrate.\textsuperscript{19}

\textsuperscript{14} Three years later Dr. Spemann described his award-winning research in his classic text, \textit{Embryonic
\textsuperscript{15} Steward, F.C., “From Cultured Cells to Whole Plants: The Introduction and Control of Their Growth and
\textsuperscript{16} Briggs, R., King, T., “Transplantation of Living Nuclei from Blastula Cells into Enucleated Frog Eggs” in
\textsuperscript{17} Watson, J.D., Crick F.H.C., “Molecular Structure of Nucleic Acids: A Structure for Deoxyribose Nucleic
\textsuperscript{18} Haldane, J.B.S., “Biological Possibilities for the Human Species in the Next Ten Thousand Years” in Gordon
Eggs” in \textit{Journal of Embryology and Experimental Morphology} 24 [2], September, 1970a, pp. 227-248; Gurdon,
In 1970, Paul Berg and Stanley Cohen of the United States achieved a monumental breakthrough in genetic engineering with the first successful gene splicing (splicing occurs when pieces of genetic material, such as DNA or RNA, are cut and removed and the remaining pieces are rejoined). Together, they created the first recombinant DNA-organism using techniques pioneered a year earlier by Paul Berg (who received the 1980 Nobel Prize in Physiology or Medicine in recognition of his new gene-splicing technology).

On July 25, 1978, Louise Brown, the first baby resulting from *in vitro* fertilization techniques, was born in Great Britain to her 30-year-old mother, Leslie, an English woman who, during her nine-year marriage to her husband John, had been unable to conceive. Louise was the result of the combined efforts of Patrick Steptoe, a gynaecologist in Oldham, Lancashire in Great Britain, and Robert Edwards, a physiologist from Cambridge University.

Then, in 1980, the U.S. Supreme Court ruled that a new, genetically altered bacterium (i.e., a non-natural micro-organism) could be patented. This widely publicised case demonstrated to scientists the profitability of genetic research; living things genetically altered by man now could be patented. In 1981, Curt Civin, director of paediatric oncology at Johns Hopkins University School of Medicine, discovered how to isolate and purify human stem cells. That same year, Dr. Civin discovered the first stem cell antibody, winning a patent to the entire class of cell hunters. In 1984, after extensive experiments with mice, Davor Solter of the Wistar Institute of Philadelphia claimed that the cloning of mammals was biologically impossible. The last phrase of the last line of Solter’s paper (published in *Science*) has reverberated through the halls of academia ever since. He wrote: “The cloning of mammals by simple nuclear transfer is biologically impossible”. Solter’s conclusion was accepted as “fact,” and for years to follow, funding for research on cloning was marginalized and almost impossible to obtain. Just five years earlier, in 1979, McKinnelly, a professor of genetics and cell biology at the University of Minnesota who specializes in frog cloning, wrote in his book *Cloning*: “I never expect to witness the construction of carbon copy humans. I do not believe that nuclear transplantation for the purpose of producing human beings will ever routinely occur”.

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On the other side of the globe, in 1984, Steen Willadsen of Denmark cloned a lamb by transferring a single cell from an 8-cell sheep embryo to an unfertilized egg whose nucleus had been destroyed. Three of the four reconstituted embryos transferred to ewes’ oviducts developed into genetically identical lambs. He also mixed embryonic cells of different species to create sheep-goats and sheep-cows. Other scientists followed his example and cloned a variety of animals. His work was the first verified cloning of a mammal using the method of nuclear transfer. A year later, Willadsen joined Grenada Genetics, a bioengineering company, and was the first to clone a farm animal using the nuclear transfer method (when he used his cloning technique to duplicate the embryos of prize cattle). Willadsen’s work, however, still involved embryonic cells, not adult cells. And in 1986, while working at Grenada Genetics, Willadsen cloned a cow using differentiated one-week-old embryo cells. His efforts proved that the genetic information of a cell did not diminish as the cell specialized, and that DNA could be returned to its original state. Willadsen’s work was an extremely strong influence on Ian Wilmut’s decision to attempt to clone sheep from adult cells, which he ultimately accomplished with the famous 1996 birth of Dolly.

In 1990 the Human Genome Project, a massive, international collaborative effort to locate the estimated 50,000 to 100,000 genes within the human genome, and the sequencing of the estimated 3 billion nucleotides that compose that genome, was launched. In October 1993, at a meeting of the American Fertility Society in Montreal, Canada, two American scientists, Jerry Hall and Robert Stillman, touched off an unexpected controversy when they presented a paper on facets of their research in the area of in vitro fertilization techniques. At the time, Dr. Hall was the director of the in vitro laboratory at George Washington University; Dr. Stillman headed the university’s entire in vitro fertilization program. Beginning with 17 microscopic human embryos ranging from the 2-cell to the 8-cell stage, Hall and Stillman used new technology to multiply the total number of embryos from 17 to 48. Major newspapers and magazines announced the landmark event with feature articles. The New York Times ran a front-page article under the headline “Scientist Clones Human Embryos, and Creates an Ethical Challenge.” Both Newsweek and Time prepared cover stories on the Hall/Stillman experiments.25

Hall and Stillman wanted to increase the success rate of in vitro fertilization by finding a way to clone a single embryo into three or four embryos, which would increase dramatically the chances of a successful pregnancy. They were not attempting to produce cloned embryos to implant in a potential mother. Rather, they were examining embryos that resulted from fertilization of an egg by multiple sperm cells, and that therefore would not live more than a few days at best. Criticism, however, was quick to arrive. 26 Sadly,

headlines in major newspapers and magazines were not always representative of the actual facts. Humans had not been cloned. An in-depth description of the process used in the Hall/Stillman experiment was published in *Science News.*

In 1995, Ian Wilmut and Keith Campbell of Great Britain produced the world’s first cloned sheep, Megan and Morag, from 9-day-old embryos. In 1996, Ian Wilmut and his team of Scottish scientists took their experiments one step farther and cloned the world’s first mammal from adult cells - Dolly the sheep, which was created using udder cells from a six-year-old ewe (see Figure 1).

One of the most important milestones in the cloning controversy was reported in the May 27, 1999 issue of *Nature,* which discussed Dr. Wilmut’s examination of Dolly’s chromosomes. Wilmut and his co-workers studied the length of the chromosome ends (telomeres) from Dolly and two other sheep produced by the same process used to clone her. It generally has been accepted scientifically that telomere deterioration is a reliable indication of a reduction in life span; the more rapid and serious the telomere deterioration, the shorter the expected life span. Wilmut and his team reported a marked deterioration in Dolly’s telomeres compared to those from non-cloned animals, and even suggested that “the most likely explanation” for the deterioration observed in these animals “reflects that of the transferred nucleus. Full restoration of telomere length did not occur because these animals were produced without germline involvement.” In other words, since Dolly was cloned from the mammary gland cell of a six-year-old sheep, in essence her telomeres already were six years old and therefore deteriorated more rapidly than those of non-cloned animals. The scientists involved in this research stressed, “it remains to be seen whether a critical length will be reached during the animal’s lifetime.” However, these same scientists admitted that “telomere-based models (…) predict that the nuclear-transfer-derived animal 6LL3 [Dolly’s numerical designation in the scientists’ study - BT/BH] might well reach a critical telomere length sooner than age-matched controls” And finally Dolly died prematurely because of telomere deterioration. Thus,

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30 Telomeres are pieces of DNA that protect the ends of chromosomes. They shorten as cells divide and are therefore considered a measure of ageing in cells.
32 Ibid.
33 Ibid.
cloned creatures may have markedly reduced life spans compared to those produced via normal, sexual reproduction and Dolly’s death will refuel the intense debate over the health and life expectancy of cloned animals. This will have serious implications for human cloning.

On March 9, 2001, three cattle (Martie, Natalie, and Emily) cloned by scientists at California State University at Chico appeared to have been born healthy, but on day 12 Natalie died, and on day 15 Emily succumbed as well - both from abrupt immune system failure. Martie was reported to be failing rapidly. While not widely reported in the news media, such events are becoming quite common in regard to cloned animals, and serve to demonstrate the potential dangers of human cloning. Many cloned animals have experienced obvious mutations, while others have died shortly after birth, even though outwardly they appeared to be quite normal. As one scientist, Rebecca Krisher, assistant professor of animal reproduction at Purdue University, put it: “Almost all of these animals, if born on a farm without a vet hospital, probably would not survive.”

In January 2003 Clonaid announced the birth of a second clone to a Dutch couple. Clonaid announced on December 27 2002 that “Eve”, a cloned baby girl, was born to an American woman on December 26 by caesarean section. But this is highly doubted by the scientific community and according to Gloria Galloway, “aside from the ethical issues, most scientists have scoffed at efforts to clone human beings and say the technology is not yet advanced enough to create a successful attempt.” However, Clonaid has presented no evidence to verify their assertion. Dr. Michael A. Guillen, a former science editor for ABC News, assembled a group of scientists to do DNA tests on the first allegedly cloned baby, Eve, to prove that she was an actual clone. Evidence would be collected via a simple swab of the inside of the girl and donor’s mouth. Guillen announced on January 6 that the team “has had no access to the alleged family, and therefore cannot verify firsthand the claim that a human baby has been cloned. In other words it’s still entirely possible Clonaid’s announcement is part of an elaborate hoax intended to bring publicity to the Raelian movement.” Clonaid’s chief executive, Dr. Brigitte Boisselier, said that the parents of Eve might not allow DNA testing because it might help the state raise a case against them, and lead to Florida seizing the baby.

35 Quoted in Cooper, A., Cloned Calves Die at California University, (Online), URL: http://www.canoe.ca/CNEWSScience0104/03_cow-ap.html, Mars 14, 2003. 
2.2 - The Techniques of Cloning

In its biological aspects as a form of artificial reproduction, cloning is achieved without the contribution of two gametes; therefore it is an asexual and agamic reproduction. Fertilization properly so-called is replaced by the “fusion” of a nucleus taken from a somatic cell of the individual one wishes to clone, or of the somatic cell itself, with an oocyte from which the nucleus has been removed, that is, an oocyte lacking the maternal genome. Since the nucleus of the somatic cell contains the whole genetic inheritance, the individual obtained possesses, except for possible alterations, the genetic identity of the nucleus donor. It is this essential genetic correspondence with the donor that produces in the new individual the somatic replica or copy of the donor itself.

This cloning is possible via either “embryo splitting” or “nuclear transfer”. Embryo splitting involves the separation of an early human embryo into two or more parts. Each of these parts has the potential to develop into a blastocyst (late embryo), which, if implanted, can develop into a child. This is how genetically identical monozygotic twins are created. However, embryo splitting can produce only a limited number of cloned individuals as the early embryo can be separated only a limited number of times, and the procedure is not able to produce a “clone” of an adult that already exists. The other method for producing cloned humans, nuclear transfer, does not suffer from these limitations.

Somatic cell nuclear transfer (SCNT) is the best-known cloning technique. The nucleus from a body cell is put into an egg from which the nucleus has been removed. Chemicals or electricity triggers the resulting entity to begin developing into an embryo. And if this embryo were placed into a woman’s uterus and brought to term, it would develop into a child that would be the genetic duplicate of the person from whom the original body cell nucleus was taken - a clone.

Somatic cell nuclear transfer is, according to Byrne, a conceptually simple procedure. The nuclear material is removed from an egg, a somatic cell nucleus is inserted into that enucleated egg via microinjection electro fusion, and the resulting reconstituted zygote is activated. The reconstituted zygote has the potential to divide into a blastocyst, and if implanted, develop into a child genetically identical to the nuclear donor. There are two fundamentally distinct types of human cloning by somatic cell nuclear transfer - reproductive cloning and therapeutic cloning.

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2.2.1 – Reproductive Cloning

Reproductive cloning\(^{39}\) is defined as the deliberate production of genetically identical individuals. Each produced clone is thus a copy of the original. Clones contain identical sets of genetical material in the nucleus – the compartment that contains the chromosomes – of every cell in their bodies. Thus, cells from two clones have the same DNA and the same genes in their nuclei.

Until now, five mammalian species - sheep, cattle, pigs, goats, and mice - have been used extensively in reproductive cloning studies. Data from these experiments clearly illustrate the problems involved and are quite compelling.\(^{40}\) Typically, very few cloning attempts are successful. Many clones die in the uterus, even at late stages or soon after birth, and those that survive frequently exhibit severe birth defects. In addition, female animals carrying cloned foetuses may face serious risks, including death from cloning-related complications. Consequently, human reproductive cloning is likely to have similar negative outcomes. Because many eggs are needed for human reproductive cloning attempts, human experimentation could subject more women to adverse health effects, either from high levels of hormones used to stimulate egg production or because more women overall would be sought to donate eggs, which involves surgery with its own inherent risks, the panel noted.\(^{41}\)

Some proponents of human reproductive cloning have argued that voluntary, informed consent would give people the option of making their own decisions about participating in research. But when critical information is lacking, as it would be in this case, fully informing patients of potential health effects is difficult or impossible. Moreover, the cloned offspring, who would have the potential of facing the greatest risks of abnormality and death, would not be in a position to offer consent.

2.2.2 – Therapeutic Cloning

This is a procedure whose initial stages are identical to reproductive cloning. However, the stem cells are removed from the pre-embryo with the intent of producing tissue or a whole organ for transplant back into the person who supplied the DNA. The pre-embryo dies in the process. The goal of therapeutic cloning is to produce a healthy copy of a sick person’s tissue or organ for transplant. This technique would be vastly superior to relying on organ

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\(^{39}\) This has been suggested, for example by Dr. Zavos before the House Subcommitteee on Oversight and Investigation Hearing on Issues Raised by Human Cloning Research in Great Britain, as a last resort when an infertile couple are unable to conceive a biologically related child via any other method.


\(^{41}\) Ibid, p. 62.
transplants from other people. The tissue or organ would have the sick person’s original DNA and the patient would not have to take immune suppressant drugs for the rest of their life, as is now required after transplants. The major advantage, however, is that there would not be any danger of organ rejection since therapeutic cloning produce embryonic stem cells that are genetically identical to a patient. These stem cells could then be differentiated into precursor replacement cells to treat one of a variety of degenerative diseases from which the patient might suffer.42

2.3 - Why we Should Feel Anxiety

After this presentation of the possible pathways into the human future, we need to ask the important question: Why should we care about human cloning? My answer is because there are too much at stake here to not bother. Critics, like Jeremy Rifkin, often like to deny human biotechnology across the board.43 But this cannot be so easily done given the rear medical advantages that therapeutic cloning might produce. Fukuyama frames this complexity very well saying, “[b]iotechnology presents us with a special moral dilemma, because any reservations we may have about progress need to be tempered with a recognition of its undisputed promise.”44

First and foremost, what makes human cloning so morally charged is the spectre of eugenics – that is, the deliberate breeding of human beings for certain selected heritable traits. Human cloning puts eugenics back on the table, but it is clear that any future approach to eugenics will be very different from the historical varieties, at least in the developed west.45 This is because virtually all occidental countries have moved sharply in the direction of stronger protection of individual rights since World War II, and the right to autonomy in reproductive decisions ranks high among those rights. The kinder, gentler eugenics that is just over the horizon will then be a matter of individual choice on the part of parents, and not something that a coercive state forces on its citizens.

There are basically three categories that we can place the different objections in: (1) religion-based objections; (2) those based on utilitarian considerations; and (3) those based on philosophical principles. I will in the remainder of this chapter consider the two first

44 Fukuyama, F., Our Posthuman Future – Consequences of the Biotechnology Revolution, Douglas & McIntyre Ltd, USA, 2002, p. 84.
45 In the late nineteenth and early twentieth centuries, state-sponsored eugenics programs attracted surprisingly broad support. Some Western countries passed eugenics laws permitting the state to involuntarily sterilize people deemed “imbeciles”, while encouraging people with desirable characteristics to have as many children as possible. The most famous case of eugenics is of course the Nazis’ eugenics policies. Since then, continental Europe has been inoculated against any form of eugenics, but in Scandinavia, eugenic laws remained in effect until late 1960s.
categories of objections, while the philosophical issues will have to wait until chapter 4 and mainly chapter 6.

2.3.1 – Religious Objections

A widespread religious belief is that man is created in the image of God. For Christians in particular, this has important implications for human dignity. All human beings possess an equal dignity, regardless of our outward social status, because of our capacity for moral choice, free will, and faith. God gave this to us through nature and hence a violation of God’s will to reproduce with the help of cloning. Reproduction is thus allowed to take place outside the context of the natural processes of sex and the family. Consequently, the human being is not a miraculous act of divine creation, but rather as the sum of a series of material causes that can be understood and manipulated by human beings. Pope John Paul has condemned the cloning of human embryos and called on scientists to respect the dignity of human beings. Speaking at an international scientific meeting in Rome in August 2000 he said, “Every medical procedure performed on the human person is subject to limits: not just the limits of what is technically possible, but also limits determined by respect for human nature itself (…) What is technically possible is not for that reason alone morally admissible.”

If you do not believe in a God, you may think that this section is not worth your time. However some of the arguments here work pretty well if you do not regard “God” as a supernatural being but instead as a poetic way of referring to the natural order of things. Religion often intuits moral truths that are shared by non-religious people, who fail to understand that their own secular views on ethical issues are as much a matter of faith as those of religious believers. Many hardheaded natural scientists, for example, have a rational materialistic understanding of the world, and yet in their political and ethical views are firmly committed to a version of liberal equality that is not all that different from the Christian view of the universal dignity of humankind.

Despite the fact that religion provides a widely spread ground for opposing human cloning, religious arguments will not convince many who do not accept any religion to start with. We thus need to examine other, more secular, types of arguments.

2.3.2 – Utilitarian Considerations

The religious catchphrase is the threat to human dignity inflicted by cloning. But these “harms” are often intangible, in contrast to utilitarian ones that are often more easily comprehensible, aimed at economical costs and harms quite well-known to us from the world of conventional medicine: side effects or other long-term negative consequences to the individual. There are good prudential reasons to defer to the natural order of things and not to think that human beings can easily improve on it through casual intervention. This has proven to be true with regard to the environment, in that ecosystems are interconnected wholes whose complexity we frequently do not understand. So too with human nature. There are many aspects of human nature that we think we understand all too well or would want to change if we had the opportunity. But, Fukuyama argues, interfering in nature is not always that easy since evolution may be a blind process and follows a ruthless adaptive logic that makes organisms fit for their environments.47

Although it may be convenient to argue for or against something on utilitarian grounds in terms of goods and bads, this proves a decisive flaw; utilitarians seldom take into account more subtle benefits and harms that cannot be easily measured, or which accrue to the soul rather than to the body. There are, in other words things that people deem to be morally wrong regardless of the utilitarian benefits that might flow from them. This, I would strongly argue, is the case with human cloning. Although it is legitimate to worry on utilitarian grounds being disquieted about unintended consequences and unforeseen costs, the deepest fear that people express about human cloning is not utilitarian one at all. It is rather a fear that, in the end, cloning will cause us in some way to lose our humanity – that is, some essential quality that has always underpinned our sense of who we are and where we are going.

If this poses a threat to us, according to these different notions, we need to understand human essence and what it is that we might lose through human cloning. In the coming chapter I will try to find an answer to the question (which I outlined in the beginning of this paper) of what human rights and human dignity are and how they should be understood.

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3 - Being Human

“The fourth and last step which reason took, thereby raising man completely above animal society, was his (albeit obscure) realisation that he is the true *end of nature*, and that nothing which lives on earth can compete with him in this respect. When he first said to the sheep *'the fleece which you wear was given to you by nature not for your own use, but for mine'* and took it from the sheep to wear it himself, he became aware of a prerogative which, by his nature, he enjoyed over all the animals (...) This notion implies (if only obscurely) an awareness of the following distinction: man should not address other human beings in the same way as animals, but should regard them as having an equal share in the gifts of nature.”


Immanuel Kant (1724-1804) was born in the East Prussian city of Königsberg, studied at its university, and worked there as a tutor and professor for more than forty years, never travelling more than fifty miles from home. Even though his outward life was one of legendary calm and regularity, Kant’s intellectual work easily justified his own claim to have affected a Copernican revolution in philosophy. Starting with his Inaugural Dissertation (1770) on the difference between right- and left-handed spatial orientations, Kant patiently worked out the most comprehensive and influential philosophical programme of the modern era. His central thesis – that the possibility of human knowledge presupposes the active participation of the human mind – is deceptively simple, but the details of its application are notoriously complex. From his analysis of the operation of the human will, Kant derived the necessity of a perfectly universal moral law, expressed in a categorical imperative that must be regarded as binding upon every agent.

3.1 – Kant’s Notion of Man, Morality, and Human Rights

Kant reconstructs, in *Conjectures on the Beginning of Human History* (Mutmasslischer Aufang des Menschengeschlechts), the steps through which human beings as a whole takes
in progressing towards culture. Humanity’s evolution from a creature governed by animal instincts to a rational and moral being, which Kant understand from a teleological perspective, leads the species to become “human” beings. Pushed and prodded by reason, and being capable of rational faculty, the human species develops specifically human desires-wishes-achievements, i.e. love, the aesthetic appeal of and taste for beauty, culture, and provisions for the future. From a creature of sense whose perceptive range is limited to mole-like gaze, the human species is transformed to rational and moral beings endowed with sight capable of scanning the heaven and seeing the wonders of the universe. And at the end of this transformation stand morality, the logical final end and highest culmination of man’s progress.

Viewed from a teleological point of view, the human species’ capacity to reason is the beacon that lights humanity’s path away from its former bestial state of survival governed by animal instincts to a “position of equality with all rational beings [Willkür].” If morality is the ultimate end (Zweck) in the development of human beings’ rational nature, it is because as a subject of morality, only the human species is alone capable of being a final purpose to which nature is teleologically subordinated. As such, human beings should never solely be treated as a mean but always also as an end or end in itself (Zweck an sich). The significance here is that we are not to treat persons or their humanity as aims or goals. The ends has a higher meaning as T.W. Pogge expound, “[r]ather, ends in this sense are fully existing entities (or attributes), which we are to respect by restraining our conduct and adjusting our goals in appropriate ways.” Kant believed that morality can be summed up in one ultimate principal, from which all our duties and obligations are derived. He called this principal the categorical imperative:

"Act only in accordance with that maxim through which you can at the same time will that it become a universal law".

However, Kant also gave another formulation of the categorical imperative: a given action is morally correct if when performing that action we do not use people as a means to achieve some further benefit, but instead treat people as something which is intrinsically valuable. He called this formulation The Formula of the End Itself:

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49 Ibid. Emphasis in original.
“Act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means”. \(^5^2\)

Scholars have wondered ever since if and why Kant thought these two rules were equivalent. They seem to express very different moral conceptions. Are they, as he apparently believed, two versions of the same basic idea, or are they really different ideas? I will not try to answer this question. Instead I will concentrate here on Kant’s belief that morality requires us to treat persons “always at the same time as an end, never merely as a means”.

When Kant said that the value of human beings “is above all price” he did not intend this as mere rhetoric but as an objective judgement about the place of human beings in the scheme of things. Plain “things” (and this includes non-human animals, whom Kant considered unable to have self-conscious, desires and goals) have value only as means to ends, and it is human ends that give them value. What differentiates the human being apart from all other creatures on the face of the earth, the distinct feature of the species, is its rational nature. Endowed with the power of rational choice, the capacity of setting an end and achieving it through rational means, humanity as a whole because of its rational nature is an end in and of itself. Hence, the source of value upon which objects are conferred springs from humanity’s rational nature - not whims, needs, or desires to which woman/men fall prey. If Kant’s categorical imperative commands an individual to act in such a way as to treat and respect the humanity whether in another fellow woman/man or in oneself always as an end and never as a means only, it is because of her or his humanity.

In order to see how Kant arrives at the categorical imperative we need to analyse this in depth a little further.

3.1.1 - Kant on Man

Kant writes that the “highest possible expression [of human achievement, i.e. culture] can only be the product of a political constitution based on concepts of human right.”\(^5^3\) The true end of Providence, the ultimate destiny of the human species, the end in which humanity as a whole is engaged, are the ever continuing and growing activity and culture. “[T]he philosopher would say that the destiny of the human race as a whole is incessant progress, and that its fulfilment is the goal to which (…) we have to direct our endeavours.”\(^5^4\) It is culture, an achievement of humanity as a whole, that is the true end of Providence.

\(^{5^2}\) Ibid, p. 429.
\(^{5^3}\) Ibid, p. 219.
\(^{5^4}\) Ibid, p. 220. Emphasis in original.
Kant traces the steps through which the human species evolves from a state of animality to a position of equality among all rational beings. According to Kant’s philosophical conjecture, once it is awakened, the human faculty of reason drives humanity as a whole from “the worse to the better.” In so doing, it plays the indispensable role of pushing and prodding the human species to move upward, to progress and to higher developments. The importance of the human species’ usage of, and capacity for, reason cannot be overestimated according to Kant. “[T]he outcome of that first experiment whereby man became conscious of his reason as a faculty which can extend beyond the limits to which all animals are confined was of great importance, and it influenced [man’s] way of life decisively.” In fact, however trivial the harm might have been, the “first experiment in free choice (…) probably did not turn out as expected.” It was nevertheless enough to open man’s eyes to the possibility of another life different from that of which his senses were hitherto incapable of even offering him a glimpse. Progressing ever higher in its developmental stages, reason would later cause worries and afflictions to be fallen upon men and women and their families. Reason spurs man, the human species as a whole, to move beyond those needs that are animated by instincts. Or, it creates new desires that are contrary to his or her immediate needs, or both. It is also reason, in spite of the “crime” of bringing “ills” to men and women and their families that leads the human species to develop specifically human desires-wishes-achievements – namely love, the aesthetic appeal of and taste for beauty, culture, and provisions for the future. At the end of this transformation stands morality. It is in morality only that the human species stands erect, apart from and evolved out of a creature of senses whose perceptive range is limited to mole-like stare. No longer animal, man is now a “human” species, i.e. rational, moral beings endowed with sight capable of scanning the heaven and seeing the wonders of the universe.

As completely erected subjects of morality, i.e. moral beings, humans make choices - rational choices. In the process, humans award value on the objects of their choosing; value is thus derived from the act of rational choice. The act of rational choice, of conferring value, is proper to humans alone. Human beings are the sole species that possesses the capacity to determine ends, i.e. defining goal(s) to which choices would eventually lead. Korsgaard writes:

“It is Kant’s view throughout his moral philosophy that every action “contains” an end; there is no action done without some end in view. The difference between morally worthy action and morally indifferent action is that in the first case the end is adopted because it is dictated by reason and in the second case the end is adopted in response to an inclination

55 Ibid, p. 223.
56 Ibid, p. 224.
for it (…) [T]he morally worthy man has adopted this end because it is a duty to have such an end.”57

The human being alone is, as the true end of nature, capable of realizing nature’s purpose of continual unfolding. Because a human being is endowed with rationality she/he is enabled to fulfill the ultimate destiny of standing on the face of the earth as the sole creature with the potential of achieving the final purpose of nature - teleologically conceived.

Telos is a product unique to human beings’ rational conception of nature and its design. Yet, telos is not only a concept of rational thought but also a product of human morality. I would say it is so because the capacity of humanity as a species in its totality for determining ends, defining purposes, and realizing them finds its completion, achieves its final, logical end in morality and in morality only. Hence, to state that human being is the true end of nature, as Kant does, it is to view an individual as subject of morality and as rational beings possessing moral values, i.e., with the capacity to value things and hence to choose objects by conferring values on them.

In making choices, an individual confers values upon objects and the world. So much that it is the human species that appropriates nature and views it from a teleological perspective. Seen from this vantage point of humanity, as Kant does, the human species in totality is alone capable of completing nature’s design, fulfilling its ultimate destiny. As a result of this achievement, or evolution, from the miserable state of animality to the culminating point where it justifies nature as a function and product of its morality, humanity has done itself honour and is able to “claim to be an end in [it]self (…) not to be used by anyone else simply as a means to other ends.”58 This claim of honour as an end in itself is expressed in the Formula of Humanity whose maxim tells every person to treat all fellow woman/men as ends and never as means, and it is this Formula of Humanity that will be analysed in the next section.

3.1.2 - Kant on Morality

Along with the development of man’s reason, I distinguishes four steps in Kant’s historical description of this development, which he outlines in Conjectures on the Beginning of Human History; (1) the refusal of animal instincts and the evolution of the ability to feel love, (2) man’s sense of decency and the inclination to inspire respect in others by good manners, (3) the anticipation of the future by not only enjoy the present moment of life but also to visualise what is yet to come, and (4) that “[man] is the true end of nature and that

nothing which lives on earth can compete with him in this respect.” 59 Recognizing his capacity for determining and realizing ends rationally, not just blind acceptance of commands, like the sheep that he shepherds and uses to satisfy his ends, elevates man as opposed to animal to the status of parity with all beings endowed with rational faculty. In terms of morality, this recognition calls every woman/man, being free, autonomous, and equal to each other to duly regard her/him-self and one another as an unconditional end in and of her/him- self and never treat the other or oneself as a mere means. More specifically, as a result of acting according to this recognition, every woman/man lives and carries with her/him the rightful duty to her/him-self, i.e. an obligation whose principle is given a priori 60 by pure reason. This duty is called the Formula of Humanity.

Hence, as Korsgaard, correctly, explains Kant’s political thought with respect to the concept of rightful duty in her comments about “Universal Law and Humanity”:

“[W]e ought to realize our humanity by developing our talents and powers, our rational capacities. We ought to acknowledge that others are sources of value by treating their chosen ends as good, and pursuing their happiness as they see it.” 61

Furthermore, treating others as equals and acknowledging them as sources of value, i.e. observing the Formula of Humanity, lead, according to Rawls, to the possibility of “constitut[ing] moral personality (...) a good will and moral character.” 62 “[H]umanity” as Rawls writes “is [man’s] pure practical reason [coupled] together with [his] moral sensibility.” 63 It is by performing the duty in accordance with the maxim expressed in the Formula of Humanity that an individual becomes aware of the power of moral law. In the process the individual is awakened to the moral sensibility of humanity’s rational nature which one shares with other fellow human beings. Rawls is right in recognizing that this awakening to and awareness of the unique moralness of humanity’s rationality “discloses [humanity’s] capacity to act independently of the natural order [free from whims, from the totality of natural desires].” 64 The human species’ freedom is thus the knowledge that one can act from a moral law of pure reason. A law based upon the principle of autonomy whose features are exhibited in such manner as the categorical imperative represents them. The content of the categorical imperative, or called at times as the Formula of Universal Law, is next examined.

60 I use the concept of a priori in a logical sense that something is a priori if its validity can be proved without consideration to sensations. That is, human beings possess dignity in virtue of being human and it does not have to be proven by empirical experiments. For further reading see P. Lübcke’s Filosofilexikonet, Centraltryckeriet, Borås, 1993, p. 32.
63 Ibid. See also p. 317.
64 Ibid, p. 297.
From the perspective of Kant’s political thought and moral philosophy, the Formula of Universal Law is the critical project that follows the conclusion of his speculative description about the *Conjectures on the Beginning of Human History*. Having retraced the steps, through which humanity discovered reason as a faculty and made use of it to free itself from a life dependent on and governed by instincts, the categorical imperative, or the Formula of Universal Law as Korsgaard characterises it, represents Kant’s examination of the moral self. The Universal Law concerns the moral conduct of the self and the use of practical reason in legislating-limiting freedom.

What emerges from Kant’s philosophical analysis of the self as autonomous agent is the idea of human autonomy - that human beings in their capacity for self-given legislations are autonomous. In fact, with respect to Kant’s moral philosophy concerning “Autonomy and the Kingdom of Ends”, Korsgaard concludes, “The categorical imperative is in a special way the principle of autonomy.”65 Similarly, as Beiner and Booth point out:

“[S]tanding at the center of Kant’s political thought is the notion that persons are free in what he terms the “positive” sense, free because they are or are capable of being the legislators of the maxims of their own conduct.”66

To deepen this inquiry into the core of Kant’s political thought it seems appropriate to consider Rawls’s constructivist account, which “recall that the moral law, the categorical imperative, and the categorical-imperative (CI-) procedure are three different things.”67

“(1) [Moral law] applies to all reasonable and rational beings. (2) [The categorical imperative, or the Formula of Universal Law] is directed only to those reasonable and rational beings that, because they are finite beings with needs [i.e. subject to the importunities of desire, and affected by, but not determined by, natural desires and inclinations] experience the moral law as a constraint. [Humans] are such beings [who although capable of reason are, however, imperfectly rational]. (3) [The “categorical imperative procedure”] - the CI-procedure - adapts the categorical imperative to [everyday] circumstances by taking into account the normal conditions of human life and [the] situation [of human beings] as finite beings with needs in the order of nature.”68

Moreover, what I think is important and to be born in mind throughout Kant’s moral philosophy, as Rawls also signals to the reader, is that “Kant is concerned solely with the

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68 Ibid.
reasoning of fully reasonable and rational and sincere agents.” This assumption bears consequences that are open to criticism. First, I would say that Kant limits humanity to rationality; he subordinates humanity’s irrationality. While all human beings are capable of rational, autonomous, moral choices, I hold an important criticism on the ground that he refuses to acknowledge victim hood due to the inequalities in education, natural gifts, and social or environmental circumstances. If we can prove this criticism to be valid, then it makes for an important objection. Second, given the unconditionality of the moral law, the CI-procedure implies that human being possesses equal and unqualified value. This moral certainty entails that every woman/man must act for the sake of that equal value. Hence, the moral constraints of duty are valid for all reasonable and rational persons, regardless of their natural inclinations or whims.

As seen, Rawls has disclosed the three different things that really are: (1) moral law, (2) the categorical imperative, and (3) the CI-procedure. In the same vein, we shall now specify three different formulations, or maxims, of the categorical imperative, or the Formula of Universal Law. First, act only in accordance with that maxim through which you can at the same time will that it become a universal law. Second, act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means. Third, imagine living in the world governed by the maxims that you have willed to be universal laws. Here Kant invites every person as moral, autonomous legislator to test whether or not she/he could be part of a world created by her/his maxims willed as universal laws of nature – a Kingdom of Ends. The ideas that Kant conveys through the categorical imperative phrased in the three formulations above are:

1. Universality is the form of the moral law.
2. Humanity as an end in itself, i.e. man´s rational nature, is the material of the law.
3. Autonomous legislation is the way to enact moral law and in the process to a complete determination of ends.70

As these ideas reveal, the categorical imperative confirms the intuition about morality. The formulations of the categorical imperative represent the right rules-procedures leading to moral conduct. And the Formula of the Universal Law is, according to Korsgaard, “to be used in actual decision-making.”71 Albeit consequences might not always follow intention, but as rational and autonomous agent, free and equal and potentially moral, every human being is capable of differentiating right from wrong. Thus, autonomy plus rationality yield the right rules-procedures leading to moral conduct.

69 Ibid.
70 Kant, 1991, p. 122.
All the specifying and detailing of the ideas and formulations of the categorical imperative serve two, in my view important, purposes, which Rawls points out. First, they deepen one’s understanding of the categorical imperative. Second, a deeper understanding induces a stronger desire to act from the categorical imperative. I understand the latter one not as a stronger desire a priori given, but that the individual comes to have greater motivation to obey the CI-procedure. The individual would also have more incentive to observe, especially, the third formulation where as moral agent is subject to her/his self-given laws by imagining living in the world so created by her/his will of maxims to be universal laws of nature. If morality is to improve the lives of individuals living together, so too is politics to be concerned with how to develop a legal system in which every person endowed with rights is able “to lead a moral life and thus be true to [her/his] own innate humanity.” As such, then, every human being as an autonomous agent is to do her/his moral duty. Viewed in this light, as Korsgaard demonstrates through her practical interpretation of the categorical imperative, morality, in Kant’s critical project, is pure rationality.

3.1.3 - Kant on Human Rights

What the concept of right imports, and allows to import, is the link that ties together Kant’s teleological view of the human species’ end (to be attained in culture) “whose highest possible expression (…) [is] based on the concepts of human right” and the contemporary ideas and debates about what human rights are and should be. Put in more specific terms, that link is Kant’s cosmopolitan right and international rights. Similar to civil or political rights, international rights of nations conceived within the legal framework of a federation of states are based upon shared common laws to which each member state is subject. Kant discloses the nature of international right, which

“involves not only the relationship between one state and another [state] within a larger whole, but also the relationship between individual persons in one state and individuals in the other [state] or between such individuals and the other state as a whole.”

Given this, in the international milieu, states ought to behave and conduct “foreign affairs” as if they were moral persons. “On the cosmopolitan level (…) whatever reason shows to

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73 Kant, 1991, p. 259.
75 Kant, 1991, p. 165.
76 Ibid.
be valid in theory is also valid in practice.”\footnote{Ibid, p. 62.} According to Kant various peoples have united to form a universal community and

“it has developed to the point where a violation of rights in one part of the world is felt everywhere, the idea of a cosmopolitan right is therefore not fantastic and overestimated; it is a necessary complement to the unwritten code of political and international right, transforming it into a universal right of humanity.”\footnote{Ibid, p. 107-108.}

Seen in this light, as individuals is to act morally in all spheres, to do her/his duty according to the principles of categorical imperative, Kant’s call for cosmopolitan right to be “transform[ed] into a universal right of humanity”\footnote{Ibid.} implies that the relationship between state(s) and individual(s) are analogous to those between two moral agents. States, too, then, should treat and respect people in general, be they citizens or “strangers”, always as ends and never as means because of their humanity. At times called the perfectionist morality, if states were to respect it, i.e., enforce and comply with a universal right of humanity, it would be Kant’s categorical imperative prescribed as moral precepts and formal principles for states to observe. As far as contemporary discourses are concerned, this universal right of humanity would be expressed in terms of today’s ideas of human rights by for example the UN, Council of Europe, WHO, and UNESCO. While separated by time and space, contemporary concepts of human rights do relate to Kant’s concepts of human right - upon which bases political constitution wherein produces and flourishes human culture.

The paper next examines the concepts of human right outlined by Kant and contemporary understanding of human rights.

**How Kant’s concepts of human right relate to today’s ideas of human rights**

I would argue that Kant’s concepts of human right and today’s ideas of human rights are both grounded on the same ontological assumption about human nature. While human nature is fixed and immutable, what is natural (fixed) and essential (immutable) is the human capacity for rationality. Kant’s concepts of human right are derived \textit{a priori} from principles of morality. These principles of morality are themselves \textit{a priori} based upon reason. Kant’s concepts of human right are the moral foundation upon which bases political constitution wherein produces and flourishes human culture because these concepts as a product of pure rationality are in congruence with human nature and serve to nurture it and to make it worthy of its humanity and morality - or in one word, dignity.
Today’s ideas of human rights as declared in the Universal Declaration of Human Rights, Council of Europe’s Convention on Human Rights and Biomedicine and its additional Convention on the Prohibition of Cloning Human Beings, UNESCO’s Universal Declaration on the Human Genome and Human Rights, and the World Health Organization’s resolution on Ethical, Scientific and Social Implications of Cloning in Human Health express *a priori*, in terms more prescriptive than descriptive, the universal rights an individual has and enjoys as human being. While they are motivated by, and are a response to, the empirical needs arose as a result of World War II in 1948, there is nothing empirical about the protection that an individual is entitled to and that today’s ideas of human rights afford. There is no need to investigate, on empirical grounds, whether human rights are important to protect. These ideas of protection and entitlement that today’s human rights provide are derived *a priori* from principles of morality, morality about what human beings are, i.e. rational beings worthy of respect and sanction and protection. 80 As with Kant’s concepts of human right, contemporary ideas of human rights stem from principles of morality that, as seen, are themselves *a priori* based upon reason. Seen in this light, from their shared ontological status as traced to the “natural” and the “essential” of human nature, both Kant’s concepts of human right and today’s concepts of human rights serve to nurture human nature to become worthy of its dignity. In the former instance, his concepts of human right are the moral foundation upon which bases political constitution that is the building block of a perpetual peace and an enlightened world (federation of liberal states). As for the latter, human rights, as they are used and applied in contemporary discourses and speeches, seems much more mundane by comparison. This is, I think, perhaps because more often than not they are practical instruments in the service of individuals who speak of their relation to a state in terms more prescriptive than descriptive. While contemporary ideas of human rights share the same ontology as Kant’s concepts of human right, much more difficult, however, is the question of one’s fulfilment of and meaning in life. Milne point out this difficulty:

“How to make the most of human life is an open question to which there is no final or definitive answer. Hence the need for freedom of expression and inquiry, so that every possibility can be discussed and critically assessed.” 81

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80 During World War II certain civilians were killed indiscriminately and put in mass concentration because they were not considered “humans” i.e., not moral, rational beings worthy of sanction and respect.

In order to make the most of life, human rights are the instrument that protects and guarantees every individual her or his right to free speech and inquiry. Human rights do not determine the content of one’s speech or inquiry, for that can only be sought and found by the individual who makes the decision for her/himself within the context of being a member of a community. As argued, being grounded on the philosophical premise that each individual has an equal, irreducible moral worth because of her or his humanity, human rights protect and guarantee this inherent dignity and worth of an individual by establishing a series of standards and norms with which a state must comply and demonstrate steps in the process of being taken to fall into compliance. Before stipulating (more in prescriptive than descriptive terms) the relation of an individual to a state, human rights must necessarily as a requisite (an intermediary step) specify the relation between individuals as persons, as moral rational human beings living in a community. To speak of human rights as if they solely pertain to an individual’s relation to a state, i.e. not taking into account interpersonal relations between individuals, amounts to regarding an individual in isolation from her or his social context. To argue that human rights diagnose (in terms more prescriptive than descriptive) primarily the relation of an individual to a state is different from regarding them as solely so. The latter would deprive of an individual’s interpersonal relations in a social context, reducing human rights to a variety of legalistic, political and civil rights in contrast to social, economic and cultural rights that in turn are compartmentalised from the fraternal and solidaritetal rights. The effective net result of stressing human rights as solely covering the relation of an individual to a state would be precisely to have de-humanised the individual. That indeed would be one of the greatest ironies. In relation to the “human” of human rights, Milne categorises the significance of Kant’s categorical imperative in two halves that are the positive side and the negative side. On the negative side, Kant tells everyone not to treat humanity whether in oneself or anyone else merely as means but always as end. This is important and appropriate to human rights because the converse of the negative side advances the proposition that each human being has intrinsic value that entitles the individual to be protected by rights. Milne explains:

“[T]o treat a human being merely as a means is to deny that anything at all is due to him, which is to deny that he has any rights. If he is to be treated not merely as a means but as a person having intrinsic value for himself, he must have rights. (/) Not only do there have to be rights if there are to be any communities: there have to be rights that every human being has, if a life worth living and worthy of the status “human” is to be considered (possible). To deny one’s humanity is to keep one from enjoying life that is possible only with human

Justice is the foundation of all rights, and the right to life is the cornerstone of all moral status (pp. 107, 114, 116, 121, 128, 129).

82 Milne, 1986, p. 86.
The positive side of Kant’s categorical imperative, Milne states, is not its opposite but rather a corollary. If human beings are not to be treated as mere means but always as ends, then there are certain ways in which they must be treated and others in which they must not. This corollary applies (and must be applicable) to all affairs and interactions between human beings if humanity in oneself or fellow human beings is to be respected and treated as an end. I agree with Milne in his view that the corollary, i.e. the positive side of Kant’s categorical imperative, implies necessarily, as indispensably and inevitably, the application of contemporary ideas of human rights in all interactions between human beings because they always transpire in a social context. Since all affairs and interactions between individuals necessarily and always take place inside a state, and life outside of a state is impossible, relations and interactions also take place between individuals and states. Given this condition, an individual’s relation to a state must, too, be covered (and governed) by human rights.

The positive side is the linchpin, so to speak, that connects Kant’s categorical imperative with contemporary concepts of human rights. In fact, the latter translates the former from abstract ideas into concrete standards and norms applicable primarily to an individual’s relation to a state - the social context in which human affairs and interactions take place. If the tone of voice used to formulate the positive side of Kant’s categorical imperative seems rather emphatic, it is for a specific reason. It is one thing to expound upon Kant’s categorical imperative and argue its link to contemporary concepts of human rights (to release oneself from the imperative is possible only by complying with it, which on its positive side amounts to observing the precepts that are embodied in today’s human rights as documented in the Universal Declaration of Human Rights, WHO’s Ethical, Scientific and Social Implications of Cloning in Human Health, Council of Europe’s Convention on Human Rights and Biomedicine and its additional protocol, and UNESCO’s Universal Declaration on the Human Genome and Human Rights). It is altogether different from feeling in oneself the moral and naturally human disposition to care about the humanity in oneself and fellow woman/men and to respond in ways appropriate to it within the context of one’s community (i.e. state). Acquiring the capacity to follow rules and precepts, without necessarily grounding one’s understanding of them on philosophical premises, is a step in the right direction to becoming a moral agent who is capable of respecting and treating humanity as an end, and hence able to observe and comply with human rights norms and

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83 Ibid, p. 125.
84 Ibid.
standards. It is, however, not enough because being a moral agent involves also one’s emotional commitment, i.e. feeling in one’s heart the disposition to care about humanity whether in oneself or fellow woman/men, and to care about, paying attention and giving one’s due to doing “the right thing”.

How Human Rights are Applied
There are a few theoretical implications in recognizing the right to claim to have rights. As is acknowledged in the UDHR, an individual has human rights simply as a virtue of being human. According to Milne, this recognition (or acknowledgement) of the right to claim to have rights cannot presumably or logically (on analytical ground which differentiates a priori given from a posterior empirical fact) antecedence the rights one has in first place. 85 It is therefore, according to Milne, logically impossible to recognize (or acknowledge) a claim if it had not a priori existed. Human rights, having been recognized in the Universal Declaration of Human Rights, thus are a priori given and are something that every individual has. On philosophical grounds, at least, they are universal, i.e. applicable to every person everywhere with respect to her or his relation to a state and cannot theoretically be partitioned, or in other words put in some kind of interest scale, into a variety of political, economic, or social rights.

Human rights are not universal, however, in terms of practical application, compliance, and observance. For political expediency and convenience, the protection and guarantee afforded (and mandated) by human rights norms and standards that the Universal Declaration of Human Rights embodied are cut up, or rather “down to size”, into various so-called “generations” of rights, i.e. political and civil, which are succeeded by economic and social. In favour of the argument for partitioning human rights is the criticism that they interfere in a state’s domestic affairs. To even hope for some form of adoption of human rights, so as not to be rejected altogether, they must be “cut down to size” to fit a state’s cultural values, social priorities, economic goals (of development), or political ideology. A logical conclusion from such criticism as above (which has been espoused in various forms by countries in Asia, Africa, South America and Eastern Europe to a certain extent) is that human rights do not apply across boundaries, be they political, societal, economic, or cultural. In the name of cultural boundaries/divides, the challenge to the applicability of human rights has been the most contentious and strongest. Even proponents of human rights concede some grounds as far as the issue of diversity is concerned. This poses serious challenge to human rights as their universality is called into question. Along with the criticisms above that human rights have to be partitioned in terms of obtaining some

85 Ibid.
practical applications, this challenge could be summed up by the catchall generalisation of relativism - cultural, political, economic, and societal.

To the extent that some credit can be granted to the relativist argument as advanced by those who criticize proponents for ignoring the historical contingency and specific processes of which human rights are an appendage, a possible response in the form of rebuttal is Donnelly’s insight among comments from other scholars:

“The structural basis for a society of equal and autonomous individuals is (...) being universalized despite its historically particular and contingent origin.”\(^{86}\)

In response to the more sophisticated challenge that human rights cannot be applied universally without undermining, if not depriving, diversity in cultural values, political organisations, societal priorities, and economic goals among nations, a critic would be well served to make the distinction between the relativist argument of diversity and more hard headed relativists rejecting human rights altogether. I think that the relativist argument holds some merit pointing out and cautions the utopian zeal and moral excess that some proponents seem to possess (and succumb to) in espousing human rights. But I think we need to clarify the use of relativism in order to not confuse things. Amartya Sen makes a good distinction of relativism into three categories related to democracy as a universal value. However, I do not see any problem in transferring his distinction to our discussion of human rights. He elucidates this in his *Democracy as a Universal Value*:

“There is a plurality of virtues here, including, first the *intrinsic* importance of political participation and freedom in human life; second, the *instrumental* importance of political incentives in keeping governments responsible and accountable; and third, the *constructive* role of democracy in the formation of values and in the understanding of needs, rights, and duties.”\(^{87}\)

Diversity is a feature of most cultures in the world. Sen’s quotation makes it evident that it is hard to discuss human rights in terms of generality, as relativists do. We have a better point of departure if we acknowledge that in shaping our values we do this from out different notions of belief and that these are dependent on the circumstances. Two persons may have the same fundamental notion that some human right is important. But, however, the difference in their situations may lead them to value a particular human right differently.

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However, underlining it cannot be equated with relativists rejecting human rights out right under the pretext of diversity by calling them Western “luxuries” or inventions of the West by and for Westerners only.\textsuperscript{88} Suffering is suffering. It is the same everywhere. As Kant explains, “a violation of rights in one part of the world is felt everywhere.”\textsuperscript{89} Behind the pretext of diversity or conducting state’s domestic affairs, human rights are being violated. Ethnic groups are being killed in Kosovo, Rwanda, Congo and many more. Political dissidents are “neutralised”, imprisoned, or under house arrest in Cuba, China, Cambodia, Iraq, Malaysia, Indonesia - to cite the most notorious cases in the recent news. Whatever the excuse, no state can be tolerated to go on a killing spree, committing human rights crimes, and not face sanctions from the international community.

The next section inquires into the argument being made and advanced against such partition of human rights.

The Conventional Dichotomy
On philosophical grounds, the partition of human rights into categories, generation, groups, or conceptual frameworks implies that human nature, as it were, could equally be partitioned into categories with different value of interest. As previously argued, human rights serve to nurture human nature to become worthy of its dignity. Human rights as an instrument for the realization of human nature which progresses along with the development of human affairs from the worse to the better, if this instrument (means) is partitioned, the end must suffer and does suffer - if it is not also partitioned. The end being human nature cannot be partitioned. To at least have the protection and guarantee of political and civil rights but not economic, social, and cultural ones amounts to partitioning one side of human nature and emphasize its development and not the other, or at the expense of the other.

On practical grounds, as shown, such partition is possible and is sadly made. The philosophical implication is that human nature is equally being “cut up and down to size.” I think it is philosophically obscene to partition human nature into areas, sectors, groups, categories, and have one side be preferred and not (or over) the other. In terms of understanding human rights at the day-to-day level, the conventional dichotomy of political versus economic rights (originating from the partition on practical grounds)\textsuperscript{90} actually creates conceptual blind spots instead of providing theoretical insights. Who is to say that the denial of economic rights, such as that to rest, leisure, and reasonable limitation of working hours and periodic holidays with pay, would not cause damages as crippling

\textsuperscript{89} Kant, 1991, p. 108.
\textsuperscript{90} This was made due to the fact that the Member States in the UN could not agree on the full text.
(physically and psychologically) as those associated with depriving an individual of her or his political right to the freedom of speech?

Furthermore, on what grounds can a state still claim to be protecting and guaranteeing (or even granting) political rights (such as that to the freedom of association and assembly) when it puts aside economic rights (for example, that to form and join trade unions) for reasons of growth and development, which supposedly authorises the repression and sacrifice of economic rights? Or vice versa? When does doing away one side of human rights allow for the protection and guarantee of another side? When does doing away one side not completely destroy the very human rights? It is often asserted that some human rights are not compatible with the needs of growth and development, and hence, those categories should be postponed until the country is developed enough. In terms of conventional dichotomy between political rights and economic rights, this argument is advanced on practical grounds of prioritising societal goals and meeting those needs, which allegedly in the process of achieving those goals or fulfilling those needs, one side of human rights takes precedence over the other.

Yet, even at face value, to view human rights in such conventional (and generally accepted contemporary) terms cannot produce much growth except intellectual confusion and dishonesty in conceptually framing the issue. The conventional dichotomy (originating from the partition of human rights on practical grounds) provides the intellectual vocabulary and theoretical framework in which it could be argued for and advanced legitimately, i.e. by utilising the conceptual terms of the dichotomy, the denial of one side of human rights or preference for one side over the other. Such is a working of the intellectual confusion and dishonesty surrounding the debates on human rights. For human rights, what is valid on philosophical grounds must also be the same on practical grounds. That is not so, needless to say. On philosophical grounds human rights, as I have made clear, should not be subject to partition, for that would be tantamount to having human nature itself be partitioned - that is altogether unfathomable. What is comprehensible and philosophically relevant is, however, the assumption upon which bases the ontological status of both today’s ideas of human rights and Kant’s concepts of human right. If Kant is correct believing in that the ultimate telos is morality, then human nature is improving along with the development of human affairs from the worse to the better. Whether it is Kant’s concepts of human right or today’s ideas of human rights, they are an instrument to realize such enlightened end by protecting and guaranteeing for an individual her or his “human” rights to enjoy a life worthy of one’s humanity and dignity.
3.2 - Human Dignity

According to the additional protocol to the Convention on Human Rights and Biomedicine from the Council of Europe on human cloning, “The instrumentalisation of human beings through the deliberate creation of genetically identical human beings is contrary to human dignity and thus constitutes a misuse of medicine and biology.”91 Human dignity is one of those concepts that politicians, as well as virtually everyone else in political life, like to throw around, but that almost no one can either define or explain. We have discussed the nature of human rights, but then what is human dignity?

In Antiquity, Christianity and the Renaissance the concept of human dignity expressed the moral superiority and responsibility of human beings in relation to themselves, animals, nature and the whole universe. Without doubt the most influential proponent of the view that all human beings possesses human dignity is Kant. These aspects of human dignity are defined as the human being as an End in itself and the idea of the categorical imperative, as described in the previous section (Kant’s Notion of Man, Morality, and Human Rights). The Kantian idea is to treat every human being as an end in itself because of the relation between human autonomy and self-government. Kant states that every human being possesses dignity and sovereignty because of its will and inner intrinsic value. In Kant’s philosophy human dignity is a basic moral principle. Because of the human capacity for losing and acquiring dignity, the protection of dignity becomes a great moral requirement.

Dignity is thus a characteristic moral feature of all human beings and it is in this sense human dignity underlies the principal employment of the concept of dignity as a moral ideal. When we strip persons of characteristics such as skin colour, looks, social class and wealth, gender, cultural background and so on, there remains some essential human quality underneath that is worthy of a certain minimal level of respect. Fukuyama calls this equality of recognition Factor X. And if all human beings are in fact equal in dignity, then Fukuyama holds that X must be some characteristic universally possessed by them. “Factor X etches a bright red line around the whole of the human race and requires equality of respect for all of those on the inside, but attributes a lower level of to those outside the boundary.”92 We are complex wholes impossible of being partitioned into separate parts. Thus, if what gives us dignity and a moral status higher than that of other living creatures is related to the fact that we are complex wholes rather than the sum of simple parts, then it is clear that Factor X is hard to define. A quiet moment of pensive reflection will make it clear that none of the key qualities that contribute to human dignity – moral choice, reason, language, sociability, sentience, emotions, consciousness – can exist in the absence of the other. Fukuyama argues that,

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92 Ibid, p. 150.
“[h]uman reason, for example, is not that of a computer; it is pervaded by emotions, and its functioning is in fact facilitated by the latter. Moral choice cannot exist without reason, needless to say, but it is also grounded in feelings such as pride, anger, shame, and sympathy. Human consciousness is not just individual preferences and instrumental reason, but is shaped intersubjectively by other consciousness and their moral evaluations. We are social and political animals (…) endowed with certain social emotions. Human sentience is not that of a pig or a horse, because it is coupled with human memory and reason.”

This leads us to ask the question: What is it that we want to protect from any future advances in human cloning? The answer is that we want to protect the full range of our complex, evolved nature and we do not want to disrupt either the unity or the continuity of human nature. For this is what certain developments within biomedicine, such as human cloning, can do in the constant pressure that exists to reduce the ends of biomedicine to utilitarian ones. It seeks to make us less complex by the attempt to reduce a complex diversity of natural ends and purposes to just a few simple categories like pain and pleasure. The relief of pain and suffering and the ultimate goal of happiness trump all other human purposes and objectives. For this is what human cloning will imply: we can save lives by creating possibilities for transplantations or we can circumvent infertility, at the expense of some ineffable human quality like genius or ambition.

This moral discussion concerning human cloning and its infertility purposes will next be examined briefly. I will briefly present the most frequently used arguments in favour of human cloning and those in opposition in order to find an answer to the question: What is the nature of the values that fuel the developments in human cloning technology and what is the nature of the values that hamper this development?

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93 Ibid, p. 172.
4 – The Great Divide: The Morals Clash within Human Cloning

“Holy cruelty.-A man who held a newborn child in his hands approached a holy man. ‘What shall I do with this child?’ he asked; ‘it is wretched, misshapen, and does not have life enough to die.’ ‘Kill it!’ shouted the holy man with a terrible voice; ‘and then hold it in your arms for three days and three nights to create a memory for yourself. Never again will you beget a child this way when it is not time for you to beget.’-When the man had heard this, he walked away, disappointed, and many people reproached the holy man because he had counseled cruelty; for he had counseled the man to kill the child. ‘But is it not crueler to let it live?’ asked the holy man.”

Friedrich Nietzsche, *Die fröhliche Wissenschaft*, 1882.

As I have mentioned, the ethical implications of human reproductive cloning have been much debated in the international fora during the last couple of decades. More precisely, the connection between human cloning and human rights and dignity has been at the very heart of this discussion. But the discussion has often been infected by scattered arguments discharged from those in favour of human cloning and those opposing this development. And as a layman it is certainly not an easy task to grasp this vast debate, but I shall, nevertheless, make an attempt to uncover those basic standpoints that fuel this struggle between those in favour of human cloning and those who raises critical voices against it. I have no intention to grasp and present the whole debate, but merely to introduce the reader into the vast debate concerning human cloning and to use this as a kind of background to the discussions in this paper. Hence, the purpose is not to penetrate details but to offer the reader some further insights into the discourse of human cloning.

On each side of the issue there are two distinct kinds of moral arguments brought forward. On the one hand, some opponents claim that human cloning would violate fundamental moral or human rights, while some proponents argue that its prohibition would violate such rights. While moral and even human rights need not to be understood as absolute, they do place moral restrictions on permissible actions that an appeal to a mere balance of benefits over harms cannot justify overriding. For example, the rights of human subjects in research must be respected even if the result is that some potentially beneficial research is more difficult in practice or cannot be done. On the other hand, both opponents
and proponents also cite the likely harms and benefits, both to individuals and to society, of the practice.

I will in the following section make a distinction between rights and consequences. In both moral arguments in support and moral arguments against human cloning there will first be a presentation of pleaded rights and then of the expected consequences from out these two perspectives. Nevertheless, these are connected, but my intention is to mainly discuss the arguments based on consequences. I shall begin with the arguments in support of permitting human cloning, although with no implication that it is the stronger or weaker position.

**4.1 - Moral Arguments in Support of Human Cloning**

What moral right might protect at least some access to the use of human cloning? A commitment to individual liberty, such as defended by J.S. Mill, requires that individuals be left free to use human cloning if they so choose and if their doing so does not cause significant harms to others, but liberty is too broad in scope to be an uncontroversial moral right. Human cloning is a means of reproduction (in the most literal sense) and so the most plausible moral right at stake in its use is a right to reproductive freedom or procreative liberty, understood to include both the choice not to reproduce, for example, by means of contraception or abortion, and also the right to reproduce.\(^{94}\)

The right to reproductive freedom is properly understood to include the right to use various assisted reproductive technologies (ARTs), such as *in vitro* fertilization (IVF), oocyte donation, and so forth. The reproductive right relevant to human cloning is a negative right, that is, a right to use ARTs without interference by the government or others when made available by a willing provider. Proponents argue that the choice of an assisted means of reproduction should be protected by reproductive freedom even when it is not the only means for individuals to reproduce, just as the choice among different means of preventing conception is protected by reproductive freedom. However, the case for permitting the use of a particular means of reproduction is strongest when it is necessary for particular individuals to be able to procreate at all, or to do so without great burdens or harms to themselves or others. In some cases human cloning could be the only means for individuals to procreate while retaining a biological tie to their child, but in other cases different means of procreating might also be possible.

Proponents of human cloning often use the three following arguments to make their case.\(^{95}\) First, they claim that this new technology will be an important response to infertility


and will allow humans who cannot at present have genetic offspring the opportunity to do so. Second, they argue that cloning will be an important tool in our ongoing battle with genetic diseases. Third, they maintain that cloning will allow individuals to clone in order to enable a person to obtain needed organs or tissues for transplantation.

4.1.1 - What Benefits Might Human Cloning Produce?

The literature on human cloning by nuclear transfer or by embryo splitting contains a few examples of circumstances in which individuals might have good reasons to want to use human cloning. However, human cloning seems not to be the unique answer to any great of pressing human need and its benefits appear to be limited at most. What are the principal possible benefits of human cloning that might give individuals good reasons to want to use it? There are quite a few arguments in favour of human cloning, but I shall only mention those of them that are most frequently presented.

**Human cloning would help infertile couples**

Human cloning would relieve the distress of couples with the inability to produce an offspring that is biologically related to them. The benefits from human cloning to relieve infertility are greater the more persons there are who cannot overcome their infertility by any other means acceptable to them. While not important to all infertile (or fertile) individuals to have a biologically connection to the child, it is important to many and is respected and met through other forms of assisted reproduction that maintain a biological connection when that is possible; that desire does not become illegitimate simply because human cloning would be the best or only means of overcoming an individual’s infertility.

**We are able to fight genetic diseases with the help of human cloning**

In some cases human cloning could be a reasonable means of preventing genetically transmitted harms to the offspring. Given the existence of a range of genetic diseases, originating children by cloning might save the lives of a considerable amount of people by allowing parents to clone a child using genetic material from the non-affected parent, or from some other “healthy” relative. Extreme proponents argue that not only are people permitted to use cloning in order to create children with as much natural talent as possible, with the best genes, and with the best chance at a long healthy life, they are obliged to do so.

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97 See for example Pence, 1997.
Human cloning would enable a person to obtain needed organs or tissues for transplantation

This would solve the problem of finding a transplant donor whose organ or tissue is an acceptable match and would eliminate, or drastically reduce, the risk of transplant rejection by the host. The availability of human cloning for this purpose would amount to a form of insurance to enable treatment of certain kinds of medical conditions. This could be criticised on the ground that it treats the later twin not as a person valued and loved for his or her own sake, as an end in itself in Kantian terms, but simply as a means for benefiting another. Brock responds, “This criticism assumes, however, that only this one motive defines the reproduction and the relation of the person to his or her later twin.”

When people have children, whether by sexual means or with the aid of ARTs, their motives and reasons for doing so are typically many and complex, and include reasons less laudable than obtaining lifesaving medical treatment, such as having someone who needs them, enabling them to live on their own, and so forth. While these are not admirable motives for having children and may not bode well for the child’s upbringing and future, public policy does not assess prospective parents’ motives and reasons for procreating as a condition of their doing so.

4.2 - Moral Arguments Against Human Cloning

A common argument against human cloning is that it would violate moral or human rights, but it is often the case that those rights that would be violated are not specified precisely. I shall consider two possible candidates for such a right: a right to have a unique identity and a right to ignorance about one’s future. The first rests upon a belief on a moral or human right to a unique identity, whom which would be violated by human cloning. Man has a right to a unique unrepeated genome. Counter-claims, however, states that cases of identical twins show there is no such right because no one claims that the moral or human rights of the twins have been violated.

The second argument deals with what Hans Jonas calls a right to ignorance. Jonas argues that human cloning in which there is a substantial time gap between the beginning of the lives of the earlier and later twin is fundamentally different from the simultaneous beginning of the lives of homozygous twins that occur in nature. Although contemporaneous twins begin their lives with the same genetic inheritance, they do so at the

same time, and so in ignorance of what the other who shares the same genome will by his or her choices make of his or her life.  

Most of the arguments that have been offered against cloning can be classified into three major groups: risks of psychological harms to the clone; risks of physical harms to the clone; and harms to society. I will deal with these arguments in order.

4.2.1 - What Harms Might Human Cloning Produce?

As in the case of those in favour of human cloning there are a large number of arguments put forward by the opposition camp. Most of them seem to object on grounds of restrictions on the clone’s freedom and autonomy. As in the former section I will only present the three most common arguments.

**Human cloning would produce psychological distress and harm in the later twin**

Knowing the path in life taken by one’s earlier twin might often have, according to Callahan, several bad psychological effects. The later twin might feel that her fate has already been substantially laid out, and so have difficulty freely and spontaneously taking responsibility for and making her own fate and life. The later twin’s experience or sense of autonomy and freedom might be substantially diminished, even if in actual fact they are diminished much less than it seems to her. She might have a diminished sense of her own uniqueness and individuality, even if once again these are in fact diminished little or not at all by having an earlier twin with the same genome. If the later twin is the clone of a particularly exemplary individual, perhaps with some special capabilities and accomplishments, she might experience excessive pressure to reach the very high standards of ability and accomplishment of the earlier twin. These various psychological effects might take a heavy toll on the later twin and be serious burdens to her.

**Human cloning would carry unacceptable physical risks to the clone**

Opponents often claim that there can be no doubt at the present time that to clone a human being would carry unacceptable risks to the clone. These would involve failure to implant, grow, and develop successfully. Other risks to clone are that the procedure in some way

100 See for example Brock, 1998.
goes wrong, or unanticipated harms come to the clone. A many years old cell from which a person is cloned could have accumulated genetic mutations during its years in another adult that could give the resulting clone a predisposition to cancer or other diseases of aging.\textsuperscript{104}

**Human cloning would lessen the worth of individuals and diminish respect for human life**

Human cloning would diminish the value we place on, and our respect for, human life because it would lead to persons being viewed as replaceable. A different version of this worry is that human cloning would result in persons worth or value seeming diminished because we would come to see persons as able to be manufactured or “handmade”. Another worry come from the use of human cloning with the aim of creating a child with a particular genome, either the genome of another individual especially meaningful to those doing the cloning or an individual with exceptional talents, abilities, and accomplishments. The child then comes to be objectified, valued only as an object and for its genome, or at least for its genome’s expected phenotypic expression, and no longer recognised as having the intrinsic equal moral value of all persons, simply as persons. For the moral value and respect due all persons to come to be seen as resting only on the instrumental value of individuals and of their particular qualities to other would be to fundamentally change the moral status properly accorded to persons. Individuals would lose their moral standing as full and equal members of the moral community, replaced by the different instrumental value each has to others.

The next chapter presents the three most important documents dealing with human cloning and human rights. The aim with this chapter is to analyse our outlook on human rights and human dignity in the international legal context?

5 - Human Rights and Human Cloning

“Due to the spectacular advances of molecular genetics, more and more of what we are ‘by nature’ is coming within the reach of biotechnological intervention. From the perspective of experimental science, this technological control of human nature is but another manifestation of our tendency to extend continuously the range of what we can control within our natural environment. From a life-world perspective, however, our attitude changes as soon as this extension of our technological control crosses the line between ‘outer’ and ‘inner’ nature.”


Since the seventeenth-century right-oriented language has gradually come to pervade moral and political discussion, so much that today right-talk dominates this debate. Rights in all their manifestations—active and passive, positive and negative, welfare and option, claim and liberty, abstract and concrete, unilateral and bilateral, *in rem* and *in personam*, mandatory and discretionary, group and individual, civil and human, to name but a few—are now extensively discussed in academic circles, recognized or denied by judicial systems, and fought for on the streets and battlefields of the world. One collection of international human rights documents published in 1994 contained 627 pages and another ran to 1146 pages. Right, in short, has become the modern linguistic vehicle for social, civil, legal, and moral action.

The basic importance of human dignity is revealed by the fact, that the notion “dignity” was more and more fixed in the international laws and constitutions and in European and international regulations or declarations especially in the 20th century as a reaction of despotism leading humans into a position without any dignity and making objects of them. The first international document where the notion of “dignity” where introduced was the preamble of the “Charta of the United Nations” from the 26th of May in 1945 referring to the dignity of the human personality.

In this section I will present three of the most important documents explicitly regulating human cloning in the international forum. These are the European Convention on Human

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Rights and Biomedicine and its additional Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, on the Prohibition of Cloning Human Beings, UNESCO’s Universal Declaration on the Human Genome and Human Rights and the World Health Organization’s resolution on Ethical, Scientific and Social Implications of Cloning in Human Health. These three parties along with the European Parliament, the Group of Advisers on the Ethical Implications of Biotechnology to the European Commission, and the Denver Summit of the Eight all condemn the potential use of human cloning for reproductive purposes. Some documents are of a declaratory nature while others, such as the Council of Europe’s Convention on Human Rights and Biomedicine and its additional Convention, are binding for signatory States.

There are numerous of other legal instruments that are of interest when dealing with human cloning, such as the UN Charter, the Universal Declaration of Human Rights, and the Convention on the Rights of the Child, just mentioning a few. It is important to understand that these are essential documents in the international human rights context and that they underlie most of the contemporary existing legal instruments concerning human rights and human cloning. However, these will not be discussed explicitly in this section.

5.1 - Council of Europe

When the important European Convention on Human Rights and Biomedicine was firstly presented to the public in July 1994 there were a lot of protests. The convention regulating a Europe-wide frame for the handling with the progresses of human biology and human medicine and the following Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine in 1997 from the Council of Europe was criticised because of the lack of enough protection guarantees and so not corresponding to the demands of human dignity. The Council responded to some of the critique and added an additional protocol to the Convention regulating human reproductive cloning more precisely.

It is possible that human cloning will become illegal in most EU countries because of the global legal ban on the development and use of this technique on human beings. In fact, many European countries have already signed the European Convention on Human Rights and Biomedicine and its additional protocol on the prohibition on cloning human beings. This protocol makes what was implicit in the Convention explicit by declaring in Article 1, “any intervention seeking to create a human being genetically identical to another human being, whether living or dead, is prohibited.”106 Since “genetically identical” is defined as

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“sharing with another the same nuclear gene set”\textsuperscript{107}, somatic nuclear transfer is included within this prohibition.

The concept of human dignity constitutes the essential value to be upheld in the Convention. It is at the basis of most of the values emphasised in the Convention and in the preamble this is stressed by “the need to respect the human being both as an individual and as a member of the human species and recognising the importance of ensuring the dignity of the human being”.\textsuperscript{108} Council of Europe seems to understand dignity in the sense of identity and integrity: “Parties to this Convention shall protect the dignity and identity of all human beings and (...) respect for their integrity and other rights”.\textsuperscript{109} But the additional protocol takes this on step further by expressing that “the instrumentalisation of human beings through the deliberate creation of genetically identical human beings is contrary to human dignity and thus constitutes a misuse of biology and medicine” followed by “the serious difficulties of a medical, psychological and social nature that such a deliberate biomedical practice might imply for all the individuals involved”.\textsuperscript{110} This is an interesting formulation of what can be described as their fundamental notion of the science of reproductive cloning. Such application is to be viewed as instrumentalisation of man and as such it might pose serious implications. And here it is becoming really interesting. It may not only pose implications of a medical nature, but also on a psychological and social level. This points to the fact that there must be something about reproductive cloning that challenges us on a more abstract horizon. This is to say that even if we in medical terms can declare negligible risks in human cloning, there is some factor X that makes this technique more problematic.

Another legal instrument banning human cloning is the EU Directive on the Protection of Biotechnological Inventions, passed in 1998, which states that “processes for cloning human beings” are unpatentable.\textsuperscript{111} This is likely to act as a disincentive for commercial research and investment on human cloning.

\section*{5.2 - UNESCO}

Although it is legally non-binding, the UNESCO’s Universal Declaration on the Human Genome and Human Rights, published in November 1997, is of extraordinary interest for the particular question of human cloning. It is expected to serve as pattern for International

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{107} Ibid, Article 1.2.
\item \textsuperscript{109} Ibid, Article 1. My emphasis.
\item \textsuperscript{110} Council of Europe, 1998, Preamble.
\end{itemize}
\end{footnotesize}
Law as well as a source of knowledge for national courts. Although it tries to set minimal standards in general, the Declaration contains specific provisions relating to human cloning. Article 11 states that “practices which are contrary to human dignity, such as reproductive cloning of human being, shall not be permitted.”\textsuperscript{112} Furthermore, the Declaration defines that in order to respect individuals’ dignity we have to “respect their uniqueness and diversity.”\textsuperscript{113}

Until now, the rationale of provisions, such as UNESCO’s Universal Declaration on the Human Genome and Human Rights and the Council of Europe’s European Convention on Human Rights and Biomedicine, is based on the protection of human dignity, as the UNESCO’s Universal Declaration states explicitly. As a matter of fact, human dignity is defined by the individual’s interest. According to Article 2 in the Convention on Human Rights and Biomedicine “The interests and welfare of the human being shall prevail over the sole interest of society or science”\textsuperscript{114} and Article 12 in the Universal Declaration “Benefits from advances in biology, genetics and medicine, concerning the human genome, shall be made available to all, with due regard to the dignity and human rights of each individual.”\textsuperscript{115} Hence, not humankind as a whole, but the individual is the focus of attention. This leads to the question of the prioritisation of individual interests. Could then human dignity, seen as the core of human self-determination, also protect the individual’s decision for reproductive cloning? If, for example, a married couple is not able to give birth to children, reproductive cloning could be a solution. From this point of view, the prohibition of human cloning could be seen as an intervention in the couple’s rights. However, I think this is an incorrect jump to conclusions. We do not possess any claim right to have children, but this is a freedom. Consequently, we cannot claim a right to reproductive cloning and thus it cannot be violated.

5.3 - World Health Organization

The Member States of the World Health Organization (WHO) consider that developments in human reproductive cloning have unprecedented ethical implications and raise serious concerns for the safety of individuals and subsequent generations of human beings. WHO therefore regards the use of cloning for the replication of human individuals as ethically unacceptable and contrary to human dignity and integrity. At the 51\textsuperscript{st} World Health Assembly in May 1998 the WHO approved a resolution on human cloning. The resolution -

\textsuperscript{113} Ibid, Article 2b.
\textsuperscript{114} Council of Europe, 1997, Article 2. My emphasis.
\textsuperscript{115} UNESCO, 1997, Article 12.
WHA51.10 - states, “that cloning for the replication of human individuals is ethically unacceptable and contrary to human dignity and integrity.”

The WHO holds a similar view as the Council of Europe in that it sees reproductive cloning as instrumentalisation of the human being. “The main objection to the use of human cloning for reproductive purposes is that it would be contrary to human dignity as it would violate the uniqueness and indeterminateness of the human being. (...) As a decisive step towards the artificial production of human beings, it would increase the risk of reducing people to objects.”

Also WHO emphasises the psychological and social consequences of the use of cloning techniques for reproductive purposes where it “is seen as having the potential to disrupt intergenerational relations and family structures, with major psychological, social and legal consequences for the individuals and communities concerned.” The report continues, “It is thought that it [reproductive cloning] is likely to be used to reinforce rather than to combat society’s prejudices, and to increase discrimination, for example, along the line of gender, ethnic group, caste and financial statues.”

5.4 - Conclusion

Perhaps the two most distinctive features of international instruments relating to biomedicine are the very central role given to the notion of human dignity and the integration of the common standards that are adopted into a human rights framework. All three above mentioned authorities define reproductive human cloning as “contrary to human dignity”. This is not surprising if we consider that human dignity is one of the few common values in our world of philosophical pluralism. Moreover, in our time, a widespread assumption is that the “inherent dignity (...) of all members of the human family” is the ground of human rights and democracy. It is indeed difficult, if not impossible, to provide a justification of human rights without making some reference, at least implicitly, to the idea of human dignity. It should be recognized that dignity alone is unable to provide a concrete solution to most challenges raised by scientific advances. Dignity is not a magic word that can simply be invoked to solve bioethical dilemmas. We should explain the reasons for considering that a given practice is in accordance, or not, with the principle of human dignity. This can enable us to see more clearly why the idea of dignity normally operates through other more concrete notions, such as informed consent,

118 Ibid, p. 3.
bodily integrity, non-discrimination, privacy, confidentiality and equity, which are usually formulated in the terminology of rights.

Another motive for this strategy is the current worldwide political consensus on the importance of protecting human rights. Like the notion of dignity, but providing a more complete and articulated formulation, human rights can be viewed in our fragmented world as “the last expression of a universal ethics”. The global success of the human rights movement in contemporary society is probably due to the fact that a practical agreement about the rights that should be respected is perfectly compatible with theoretical disagreement on their ultimate foundation. The UDHR is the best example of this phenomenon, because representatives of particularly diverse, even opposed, ideologies drafted it. Upon this legislative foundation has been built an extensive network of human rights mechanisms designed to develop international standards, monitor their implementation and investigate violations of human rights. In the words of Glendon, today the UDHR can be considered as “the single most important reference point for cross-national discussion of how to order our future together”. It is true that global bodies often lack the ability to deal with the violations of human rights. In spite of all its weaknesses, however, the current human rights system is the only mechanism available to protect people. This is why the integration of some principles relating to biomedicine into a human rights framework seems fully justified. It should not be forgotten that what is at stake in some bioethical issues, such as reproductive cloning, is nothing less than the preservation of the identity of the human species. Thus, it is not an exaggeration to say that we are confronted here with the most important decision we will ever make. In other words, it seems clear that, in the case of conflict between the preservation of humankind from harm and the protection of purely financial or scientific interests, international law should give preference to the first option.

5.4.1 - The Consensus

The emerging global consensus on bioethics is clearly minimalist. When addressing these sensitive issues, international instruments do not pretend to provide a precise and definitive answer to the most intricate questions posed by medicine and genetics. On the contrary, international bodies tend to lay down very general principles. The importance of setting general principles relating to biomedicine should not be understated. General international standards, far from being purely rhetorical statements, may constitute a first step towards

promoting more concrete regulations at a national level. It should not be forgotten that national governments, not international organisations, are the primary agents for the realization of human rights.

The international consensus is exceptionally precise on human cloning, because it aims to prevent some potential developments that raise the most serious concerns for the future of humanity. The lawmaking process, which is usually accused of being too slow to keep up with scientific advances, has on this occasion overtaken science, because legal provisions are being adopted to prevent this technology that does not yet exist. A problem, however, is that neither Council of Europe, UNESCO, or WHO define human dignity in their regulatory bodies. All these three organisations understand dignity as tantamount to uniqueness, integrity, diversity, identity, and indeterminateness. But what does these mean? And in what way does human cloning actually violate these concepts? These loose definitions of dignity challenge its own premises by not defining its foundations. This fact opens up the discussion of what it is in human cloning that actually makes it a violation of human rights.

The human rights strategy adopted by Council of Europe, UNESCO and WHO seems, nevertheless, to be the most appropriate way to manage bioethical issues from a global perspective. Certainly, the search for a global consensus in this area is not free from difficulties, especially because it would be impossible, and indeed unfair, to impose a monolithic, detailed legal framework on societies with different socio-cultural and religious backgrounds. This is why the harmonisation of principles about biomedical activities must focus on some basic rules. This enterprise seems to be feasible because international law presupposes a hard core of universal human rights. The major challenge today, therefore, is to identify, through a constructive, intercultural dialogue, the universal principles that are relevant to biomedical activities. The current international efforts oriented towards the prevention of human reproductive cloning show that new common standards, which take into account not only the interests of present individuals but also those of future generations, are already emerging in this area.

As a result, international law’s reaction to reproductive human cloning reflects not legal but an ethical dominated view. This blending of ethical and legal issues involves risks for legal indistinctness and uncertainty. Neither the judge is qualified for an ethical decision-making, nor are ethical principles feasible in legal practice. Therefore, it is of paramount importance to clarify the role of ethics in legal decision-making. Hence it follows that, in the interest of diminishing legal disagreements, a prohibition of reproductive human cloning has to be labelled as an ethical decision. Furthermore, if the regulatory framework of international human rights is chosen as a tool for the genesis of legally binding ethics, then human rights’ nature is changing.
So far we have discussed the nature of human rights and human dignity, and how we understand these today. Moreover, we have discussed the nature of the values that fuel the developments in human cloning technology and the nature of the values that hamper this development. And finally, in this chapter, we investigated three major documents on human rights and human cloning in order to clarify our outlook on human rights and human dignity in the international legal context. The following chapter is intended to, on a more philosophical level, discuss how we understand human cloning in the face of human rights and dignity and the potential implications human cloning can pose to our society and how our mere knowledge about cloning, and our knowledge put into practice, affect our conception of human nature.
PART III

6 – To Be or not to Be – That is the Question

“You weren’t there any more. I don’t know why, but I know you were gone, just not there any more, and I was frozen with grief. (You know how it would be. I was eating lots of salad, running four miles a day, writing several articles – but still, my heart was a heavy cold block.)

Then, one day, our friends at the institute told me that they had a surprise for me. They had seen how unhappy I was, and they wanted to bring me something. I heard my apartment doorbell ring. I opened the door to the elevator. There, nestling in a purple laundry basket, surrounded by rushes and daffodils, wrapped in a green plaid pajama top, was the baby clone. He looked up at me with the defiant smile of baby Hercules getting ready to throttle the serpents. His hands were already big enough to hold a tennis racket, and his thighs showed signs of promise.”


Ever since the successful cloning of Dolly the world has been buzzing about the historical event. Dolly the sheep has redefined the meaning of the words “identical twin”. Not only does she look like her mother, she has the same genetic makeup as her. This experiment was not only thought of as impossible, but unthinkable. It was achieved in July 1996 by Dr. Ian Wilmut of the Roslin Institute in Roslin, Scotland (see section 2.1 – On the Road to Dolly). These scientific developments responded in that Council of Europe, UNESCO, and WHO issued legal ban on all kinds of human cloning (see chapter 5).

Appeals to human dignity, and to the moral obligation to protect it, have been a feature of responses to the cloning of Dolly the sheep. Dr Hiroshi Nakajima, director general of the WHO, said: “WHO considers the use of cloning for the replication of human individuals to be ethically unacceptable as it would violate some of the basic principles which govern medically assisted procreation. These include respect for the dignity of the human being.”122 A first question to ask when the idea of human dignity is invoked is: Whose

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dignity is attacked and how? The immediate following questions would be: How can we understand human cloning in the face of human rights- and dignity and what implications can human cloning potentially pose to our society? How does our mere knowledge about cloning, and our knowledge put into practice, affect our conception of human nature?

There are of course people that do not think human cloning represents any problem whatsoever. I am thinking about e.g. James Watson, the co-discoverer of the double-helix structure of the DNA. In an interview in the latest issue of Scientific American he said, “Cloning now is the issue. But the first clone is not like the first nuclear bomb going off. It’s not going to hurt anyone. (...) People say, ‘Well, these would be designer babies’, and I say, ‘Well, what’s wrong with designer clothes?’”\textsuperscript{123} In his view, human cloning would not be a violation of any human rights. Rather, this practice would be a right in Watson’s view: “Reproductive decisions should be made by women, not the state.”\textsuperscript{124}

But the fact is that the possibility of human cloning represents, in my view, a violation of two fundamental principles on which all human rights are based: the principle of equality among human beings and the principle of non-discrimination. The principle of equality among human beings is violated because in human cloning we encounter a form of man’s domination over man in the form of “creating” another. The illicit form of human discrimination involved in this procedure comes from the selective and eugenic mentality inherent to the logic of the cloning process. The violation of these two fundamental principles is tightly interrelated. Let me elaborate this discussion a little bit further in the next coming sections.

\textbf{6.1 – Two Faces of Crisis}

As laid out earlier there are many fears connected to a practice of human cloning, mainly among the general public. However, some of these fears are quite groundless and are based on misunderstandings. I think we need to clarify these once and for all. There are principally three such misunderstandings: 1. A human clone is a human being no less unique in his or her personhood than an identical twin. 2. A human clone has all the rights and privileges that accompany this legal and moral status. 3. A human clone is to be accorded the dignity and respect due any member of our species.

We can distinguish the concept of human dignity into two important elements: the external- and internal element. The external element of dignity is about how others see the clone in the society on a macro-level. The second one – the internal element - is the question of the individual and the conception of personal identity, i.e. how the clone sees

\textsuperscript{124} Ibid.
itself. In both of these levels human cloning have the potential to create crisis in breaking up and debilitate the concept of dignity all humans are entitled. In the question of rights and privileges there is no doubt that clones will have the same legal and moral status as everybody else in the human race. The rise of clones will not imply a new human species, but rather a new generation – let me call them Generation C. But this is enough giving birth to speculations of how unique and special clones actually are. The point made here is that these crises goes beyond the virtual clone and focuses on the intention of the creation. No longer is the evolution the creator with the dices of randomness. A new gambler is in town and this time the dices are equilateral.

6.1.1 – The External Crisis and Society

On the societal level we could ask ourselves what kind of society we would end up with were human cloning would be permitted and widely practiced. Questions that come to my mind are: What kind of peoples, parents, and children would we become in such a world? Many fear that it will be a bad one. The strength of public reaction reflects a deep concern that somehow many important social values could be harmed in a society where such cloning was widely used. In his testimony before the Commission on March 13, 1997, Leon Kass summarized many of the widely held concerns regarding the possibility of cloning human beings:

“Almost no one sees any compelling reason for human cloning. Almost everyone anticipates its possible misuses and abuses. Many feel oppressed by the sense that there is nothing we can do to prevent it from happening and this makes the prospect seem all the more revolting. Revulsion is surely not an argument. But (…) in crucial cases repugnance is often the emotional bearer of deep wisdom beyond reason's power fully to articulate it.”

Furthermore, we have the whole question of the “slippery slope” dilemma connected to the moral discussions concerning the future of human cloning. That is, if we allow this practice and let it become widely used, then we have opened Pandora’s box to questions of eugenics. In its very essence I would say that human cloning is built upon the premise of eugenics. But, importantly, this would be a positive eugenics and not a negative one. The most widely known example of negative eugenics was of course the holocaust of the European Jewish people by the Nazis, but also the sterilization laws used in e.g. Scandinavia as long as until late 1960s. The positive form of eugenics that human cloning would represent differs from these horrible practices. Instead of restraining people the

ambition is to enhancing them. And what is wrong with that? You can make a pretty good medical argument supporting cloning on the basis that it enhances peoples health and that this should be something everybody should, and are, striving for. I agree that it is a societal good to have as many healthy people as possible, but human cloning is not the answer. Nothing good can come out of it. Negative societal outcomes are more likely to occur than positive in my opinion. We should not underestimate the power of our minds. If there were to be a negative response towards cloned people in society, these would not be targeting the physical character (appearance), but the intention of this creation of a new generation – Generation C. Namely a generation without genetic hereditary flaws.

This is not to say that there will be a total rejection from society and social discrimination where the clones will be subdued into group identity and not being seen as individuals and special. The suspiciousness will rather go to those who have created the clones (the parents and a third part). Consequently, the rejections will point to the interests of the creators rather than the virtual clones. And this, of course, will imply an increasing risk of personal identity crisis among the clones.

6.1.2 – The Internal Crisis and Generation C

The slippery slope argument is a strong one that should not be neglected. The other face of crisis – the internal element – is, however, an even stronger one in my view. The psychological implications might have a devastating effect on the clone in its reflection over its origins. This is because human cloning has the potential of threatening the psychological identity of the cloned person by the presence of his “other”. On the one hand this crisis will be concerning the genetic uniqueness and on the other it will give rise to spiritual questions - Who am I? What am I? In what purpose was I created? These are important existential question likely to occur. Deeper implications of these questions concern the autonomy and freedom of the clone. Jürgen Habermas express his misgivings on this:

“Liberal eugenics [human cloning] would not only affect the capacity of “being oneself”. It would at the same time create an interpersonal relationship for which there is no precedent. The irreversible choice a person makes for the desired makeup of the genome of another person initiates a type of relationship between these two which jeopardizes a precondition for the moral self-understanding of autonomous actors.”

It is true that this power given to one who thinks itself to be capable of making this choice is problematic. But the question is if human cloning *per se* act as a restriction on the moral autonomy of the person concerned? We have to dig deeper to find an answer. Having Kant’s formula of “the end itself” in mind, every single person have to adopt a “we”-perspective and give up the perspective of a first person in order to be able to together attain value orientations which can be generalized. Furthermore, in cases of moral conflicts we should then adopt the categorical imperative, which enjoins us to subject our own will to the very maxims which everybody may want to see as a universal law. In this way we will act accordingly to actions that have the well-founded consent of everyone, or rather the consent of most of us.

A necessary condition for the perception of being free is to be the author of our own actions and aspirations. If this is being restricted then we feel as our “self” is slipping away and replaced by some “other”. In the case of cloning this would mean that the clone believes to be created for a purpose and therefore, in spirit, less free. The complex nature of the body and spirit has thus in some way been deprived of something – Factor X has been reduced. The decision to clone would not be supported on a societal macro-level, but would instead be decisions taken by individuals in isolation and with special interests. Consequently, if most of us consider human cloning practices to be condemned and that such practice would not be based on a well-founded social consent, then we have a moral conflict. And if we add this to the cloned person’s feeling of its “self” slipping away we are moving towards questions of interests instead of the question if human cloning *per se* puts restrictions on autonomy. I will further discuss these matters more extensively in the next-coming sections.

Besides this potential conflict between feeling free and being manufactured we have the question of possible physical harms. It is important to recognize that the technique that produced Dolly the sheep was successful in only 1 of 277 attempts. If attempted in humans, it would pose the risk of multiple miscarriages in the birth mother and possibly severe developmental abnormalities in any resulting child. Clearly the burden of proof to justify such an experimental and potentially dangerous technique falls on those who would carry out the experiment. The cognizance of these possible effects would probably add to the psychological stress already existing.

### 6.2 - The Matter of Human Dignity

Before we continue I think we must clarify what human dignity is. To do this we must consider the meaning and justification of the claim that human beings have inherent dignity or worth. Frankena has distinguished between two *types* of values – intrinsic, or inherent
values, and extrinsic, or instrumental values. But this is a false presumption because it confuses concepts that do not belong together. To understand the claim that human beings have inherent dignity, I offer that we distinguish between two categories of values – intrinsic and extrinsic, or final and instrumental values. Something has intrinsic value if it is valuable for its own sake, i.e. good as an end. Something has extrinsic value if it is valuable as a means to some other end or goal. That is, the first category is about the foundation of the value. The other category (final and instrumental values), however, is about means and ends, i.e. something is not good as an end but depends on some other factor – we give it value. For example, many people hold that happiness is intrinsically valuable, while a dental appointment is of final value only as means to another end, e.g. dental health. Many things, such as health, might be valued for their own sake and as a means to other goals, such as wealth or happiness.

In normative ethics the claim that “human beings have dignity or worth” amounts to a general claim about how we should treat human beings - namely, as valuable for their own sake, not as mere instruments to other ends or goals, as the categorical imperative and Kant’s further elaborated principle of humanity (the formula of the end itself) tells us. Contemporary neo-Kantians and many bioethicists have endorsed versions of this principle. According to these writers, human beings have intrinsic moral worth because they can act as moral agents. A moral agent (or person) is a being that can understand, develop, and adhere to moral rules. Moral agents have moral rights as well as moral duties. Human beings that have not yet become moral agents, such as children, or those who cannot become moral agents, such as mentally retarded people, may still have moral rights because they have interests (such as to live and eat). The principle of humanity also implies that moral worth is held equally, as it does not make sense to say that someone has greater moral value than someone else does. If this were not the case, it would be no ethical conflict to sacrifice one person of lesser moral worth in order to benefit another person of greater moral worth.

The idea that human beings have intrinsic moral worth also finds broad support in various religious traditions, such as Christianity, Judaism, Islam, and African and Native American religions. Judeo-Christian theologians have argued that people have dignity or moral worth because they are created in God's image. In the first chapter of the Book of Genesis, the Bible states that God made man in His image. Theologians have interpreted this claim to mean that God endowed human beings with moral, spiritual, emotional, and

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128 Thanks to Bo Petersson for pointing this out. For a further elaboration see his expounding on these distinctions in Forskningsetisk Vägning 1:Forskningens värde 6, UniTryck, Linköpings universitet, Linköping, 1999, pp. 69-113.
cognitive attributes that reflect His divine nature. Thus, human beings have moral worth because God made human beings and God endows what He creates with moral worth. Human beings are likewise equal in that all people are made in the image of God.

Human cloning challenges who we are, and more importantly, who we can become. It has the power to control the physical basis which “we are by nature”. Thus, cloning is now shifting the line between this natural basis we cannot dispose over and the “Kingdom of Ends”. I hold a similar view as Ronald Dworkin in that controlling our “inner” nature we are changing the overall structure of our moral experience. Thus, the perspective change, brought about by cloning, for conditions of moral judgement and action that we had previously considered unalterable. We distinguish between what nature, including evolution, has created and what we, with the help of these genes, do in this world. This distinction results in a line being drawn between what we are and the way we deal, on our own account, with this heritage. This “decisive line between chance and choice is”, to Dworkin, “the backbone of our morality.” Human cloning, thus, invoke fairs before the prospect of human beings designing other human beings.

6.2.1 - The Character of Danger

I think it is important to distinguish between violations of human dignity and threats to human dignity. Violations of human dignity are actions that treat people as having only extrinsic worth or only a market value. Threats to human dignity, on the other hand, are actions that could lead to violations of human dignity. For example, raping a person violates that person’s dignity. A motion picture that glorifies rape threatens human dignity because it could cause people to rape. Selling a person as a slave violates that person’s dignity; exploitative labour practices, such as indentured servitude or paid child labour, threaten human dignity because they could lead to practices that are the equivalent of slavery.

Another way of understanding the distinction between a violation and a threat is to distinguish between harm and risk. Violations of human dignity harm people, but threats to human dignity create a possibility of harm. Most moral theorists agree that it is not only wrong to harm other people, but it is wrong to impose unreasonable risks on them. Many of the risks that exist in society are permitted because they are considered reasonable. The difference between a reasonable and unreasonable risk depends on the probability and magnitude of any harm, the probability and magnitude of any benefits, as well as any basic

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rights at stake. Likewise, threats can be understood as either reasonable (or acceptable) or unreasonable (or unacceptable).

Moreover, we can distinguish between risks and threats in a linguistic point of view. And I think it is this distinction that is the most important one to understand, or at least to bear in mind in discussion around social, psychological, and behavioural implications of human cloning. Often when discussions and reflections take place outside the scientific domain, these are fuelled by quite different meanings concerning possible implications posed by cloning. While the scientific community like to calculate the probability of some harm to occur, common people holds a quite different notion responding to the feelings of probability. With the risk of oversimplifying we can categorise the linguistic use of risks in the scientific community and the use of threats in what I shall call the general public. What is the difference anyway? I would argue that the former are characterized by being much more concrete, but not in the meaning more tangible. It is rather the opposite. When the general public conceive something as a threat, may it be of physical or psychological nature, they do so on the premise of “high-risk”. Even though there is no evidence - that is, scientific evidence – some possible negative outcome might be regarded as a too high price to pay and should thus be avoided, or even prohibited as in the case of human cloning.

Jointly for different scientific descriptions of risk is that they manifest the risk conception containing on the one hand the probability for something to happen, and on the other the consequences. The undesirable effects are assumed to be avoided or extenuated if the decisive actions or events are modified or removed. The risk becomes a cause-and-effect relation. The possible effects to the clone are principally calculated in probability calculus and are predominantly aimed at reducing harms in physical nature. This kind of approach demands more “hard” knowledge than the approach characterized by threats in that calculating possible risks takes a lot of endeavours before being able to establish a risk. This, however, creates a problem in the case of human cloning. Since, which has been shown earlier, major organisations like UNESCO, Council of Europe, and WHO has condemned experiments of human embryos for cloning purposes, it makes it hard for the scientific community to establish whether there are any actual (physical) risks. The approach emphasizing the threats to humans posed by cloning do not suffer from this drawback. What I mean is that threats do not demand the same burden of evidence as risks. The entire symbolic in a threat actually rests upon the premise that it does not have to be “proved”. In this sense a threat to the human being - may it be physical or psychological, threats to our rights, or our nature - is more abstract and indefinable than calculated risks. To Östberg, risk as the product of probability and effect is a concept that is not natural in all respects for humans.¹³⁴ Individuals react in accordance with their experiences of risk and

not in relation to any probability or scientific risk evaluation. The individual risk estimation can therefore be described as a “subjective risk” unlike the scientific “objective risk” notion. This means that individuals, with lay knowledge in relation to science, define risk from out their selves. So even if the probability for something bad to happen, in scientific terms, is low or even non-existing, the risks can nevertheless be regarded as unacceptable. The fear for something to go wrong and what might happen if it does, discourage people from accepting certain risks.

6.3 - Matter of Rights

Some proponents of human cloning often like to give prominence to the right to found a family without any governmental interference. They especially do so by referring to the UDHR and Article 16.1 that states, “Men and women of full age without any limitation due to race, nationality or religion have the right to marry and to found a family.” Why, therefore, cannot cloning be another form of extending one’s reproductive right? Science has already made available, e.g. techniques to genetically test the foetus and the collection and use of gametes. Thus, some argue that cloning is just another example of controlling our reproductive capacity. And because cloning does not manipulate the genome to create a different entity and thus, it can be viewed as another reproductive technology that takes an existing genome and makes a duplicate. But I do not accept that this implies an unlimited right to create human beings by any technological means available. The wording of the above clause implies that the right to reproduce is the right of a consenting couple, not the right of an individual in isolation, and that the right in question is, therefore, the right of the couple to have their own genetic children. But this right is a freedom, not an entitlement. The freedom to do anything does not imply a right of access to each and every possible means of achieving it. All rights and liberties are constrained by norms of moral permissibility. For instance, there is a general freedom to acquire and to hold property. But one cannot do so by, say, criminal activity. So the right to “found a family” does not imply the right to have children by every possible means. The UN certainly did not have in mind to protect human cloning back in 1948 and the freedom to reproduce in its strongest sense is simply to “reproduce” not “replicate”, as in cloning.

Let us suppose that we have a right to human cloning and that both men and women have this right. This would have implications in a gender perspective. Even though we might accept women’s rights to cloning what is required is that this technology is available and offered by the biomedical field. But this would probably not be a problem, in let us say 10-20 years, if human cloning were to be accepted. However, the real problems arise when

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it comes to offer the same right to men. This is because now we impose some constraint on a second part – namely women. An embryo needs a cradle in order to evolve to a glorious foetus and this can only be offered by a woman (I do not dare to speculate in the future). So permitting men to clone puts a constraint on women per se.

I doubt that technology has the power to create new fundamental rights. Fundamental rights arise from the human condition, and are therefore valid in principle anywhere at any time. To postulate a fundamental right to asexual reproduction is like postulating a right to breathe water. The right to reproduce is, essentially, the right to exercise a natural capacity, namely to beget and to bear children. There should be support for any fertility treatment that allows a couple to do that, and would include it within the exercise of the freedom to reproduce. This would not include any form of fecundity treatment in which embryos are created outside the human body, as being guaranteed by the right to reproduce. There is a freedom to beget and to bear children. There is no right to manufacture people. As reproductive medicine advances, we must distinguish clearly between these two concepts.

6.3.1 - Individual Genetic Identity

To what extent can a person be said to have a right to an individual genetic identity? This is not a form of words that I would choose to use. There is certainly no right to be genetically different from other human beings, since the fact of being an identical twin is not a violation of any right. But we can detect a valid point underlying this question. Human beings have the right to an identity (genetic and otherwise), which is individual in the sense that it has not been decreed in advance by the will of others. It is the issue of control over the genome of the child that is significant. From being controlled by nature and the long history of evolution, the control would end up in the hands of another human being endowed with interests. Let us imagine living in a world governed by maxims we have willed to become universal laws – a Kingdom of Ends. We allow human cloning in the regulatory framework worldwide and thus make it available for everybody (at least to those that can afford it). More and more people find this technique to be a favourable way of “knowing what you get” thus diminishing the random factor that constitutes the whole creation of the human being. Let me elucidate this with an example: If you place a bet on a horse and want to make, at least, some money you probably place your bet on a short odd. On the other hand, if you want to make some good money you probably place it on a long odd. Since most people are low-risk takers, affording human cloning could lead to the fact that these might choose this technique in order to replicate. Is this really a future we want to have before us?

Some like to stress that the human genome is closely linked to personal identity and that the genome plays an important causal role in shaping physiological, behavioural, and
psychological features of human beings. Moreover, they argue that the genome plays an important symbolic role in our society. Many people now regard a person’s genome as a symbol of the person. Thus, you could say that the human genome has a “special status” as a body part because of its causal role in human physiology and behaviour and because it has acquired symbolic importance. For these reasons, some would argue, cloning of human beings would produce serious psychological harms to the cloned child, such as a possible loss of a sense of individuality or unique identity. But this is, I would like to stress, a problematic assumption. This argument seems to presuppose that human individuality or identity is determined by the uniqueness of our genome. But only on the crudest genetic determinism, according to which a person’s genome completely and decisively determines everything else about the person (all of the person’s traits, character, and complete life history) would this be so. There is really nothing that can support this kind of genetic determinism. Whether a specific trait will be present depends not just on genes but also on biological and environmental factors. Thus, in spite of having practically the same genes, identical twins certainly have unique and distinct identities. They develop different interests, relationships – they make different choices. This leads us to the fact that their individuality does not seem to be threatened by the piece of evidence that they do not have unique genetic endowments.

6.3.2 - The Right to an Open Future

It is a human right to have personal freedom to choose our own future from our known preferences. This is something that we all agree on and is supported by Kantian ideas and by UN. I have a free will to do what I want and no one should interfere in my life interests, as long as my actions do not cause effects on others’ life plans. Some opponents claim that human reproductive cloning is to subdue the subject to the same determinism as in the case with identity and thus depriving the right to choose its own future. In this sense, this method of creating life would limit the choices of the child because of having a specific future (being pre-determined) and thus interfering in the individuals life plans. However, for the sake of the discussion we need to clarify that even if clones are genetically identical with one another, they will not be identical in physical and behavioural characteristics, because DNA is not the only determinant of these characteristics. A pair of clones will experience different environments and nutritional while in the uterus, and more importantly, they would be subject to different inputs from their parents, society, and life experience as they grow up. There is no reason to believe that any form of genetic

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determinism is true. Instead, of course, a person’s traits, character, and life history are the product not just of that person’s genome, but of his environment and choices as well.

Joel Feinberg has argued for a child’s right to an “open future”. His idea is that children should not have their future possibilities so hampered as to eliminate a reasonable range of opportunities for them autonomously to choose and construct their own life. This right to an open future would be violated by denying children even a basic education, and perhaps as well by creating them as a later twin by human cloning if they would then believe their future has already been set for them by the choices made and the life lived by their earlier twin. According to Feinberg, twins born simultaneously differ greatly from twins born with a significant time gap in between. Simultaneous twins, who share very similar genetic material, begin their lives together, and, in the course of their development, select their own paths. Their genetic background may help determine the outcome of their lives, but they have no knowledge of their future. In this sense, “ignorance of the effect of one’s genome on one’s future is necessary for the spontaneous, free, and authentic construction of a life and self.” However, a delayed twin already knows the fate of the earlier twin and this knowledge may be sufficient to remove the spontaneity of the later twin’s life, even if the later twin chooses a distinctly different path from the earlier twin.

Hans Jonas holds a similar view presenting the intriguing point that as human beings one of the most important conditions for our psychological well being is our ability to go through a process of self-discovery. As individuals we must find our own way, with some guidance, in developing our life plan and our worldview. To Jonas, not knowing where you will end up is necessary for the journey itself to have meaning, and that is precisely what we rob from our children when we clone ourselves. According to Jonas, our very freedom and independence rests on our ability to say that we are unique and that it is up to us, as individuals, to chart our own course. In order to do this, however, we must be somewhat ignorant about what lies ahead for us. Jonas argues sensible, “The ethical command here entering the enlarged stage of our powers is: never to violate the right to that ignorance which is a condition of authentic action; or: to respect the right of each human life to find its own way and be a surprise to itself.”

According to Jonas, when we are clones, we lose our self-ignorance, lose the mystery of who we are as individuals, and lose the freedom to create our own characters. Human cloning, in which there is a time gap between the beginning of the lives of the earlier and later twin, is fundamentally different from homozygous twins that are born at the same time and have a simultaneous beginning of their lives. Ignorance of the effect of one’s genes on

139 Jonas, 1974.
140 Ibid.
one’s future is necessary for the spontaneous construction of life and self.\textsuperscript{141} So, to Jonas, human cloning is a serious harm to both the clones themselves, and to our self-image as human beings. It is, thus, an insult to what makes us uniquely human - our autonomous nature.

A problem, however, is that these appeals to a right to ignorance or to an open future rest on the questionable assumption that one’s genetic endowments completely determine one’s entire life path. But, as was said earlier, such an assumption is false because it ignores that genotypes have a range of phenotypic expression, overlooks the significance of the environment, and disregards the importance of one’s choices in building a unique and distinctive life. The problem with the belief in genetic determinism is that it rests on a notion of an \textit{analytic} proposition foundation, that is, propositions that are true by nature.\textsuperscript{142} While this is the belief, the truth is that it rests on a \textit{synthetic} proposition – propositions that are not true by nature.\textsuperscript{143}

The falsity of this belief, nevertheless, does not show that the possible psychological harms to the clone are non-existent, especially if the belief in genetic determinism is widespread. Jonas argument holds another strong merit; the problem with cloning is not that we will use it to harm people or that we will apply it for trivial ends. Rather, it is the assumption that we can create a person who will satisfy our goals, thus entering the means to end-discussion. That person, then, is less free to fail us, and is just less free. This is a clever argument because now we are investing expectations on the child. Even though our expectations rest on false premises, being genetic determinism, we nevertheless invest our hopes on special outcomes to be produced by the clone. A difficulty in the means to end-discussion is, of course, that it is hard to elucidate whether a child is a means or an end in different contexts. Just as we can say that a natural child is regarded as an end, we can say that the clone is the true end. Who is to say that a clone would be less loved? One could ask: If you want to have a child with a specific genome would not the child then become an end? My repartee would be: The means does not justify the end. It is the parental interests that demand the use of cloning. If you want an “ordinary” child, a good alternative is to adopt. The problem in cloning, however, is the desire of a “special” child. Even though Kant states that we should always treat each other as an end and never merely as means, I argue that the clone, in actuality, will be a means. The end, being the child the parents expect, implies the technique of human cloning as means thus intensifying the effect of being treated as a means.

It is a tricky balance act between means and ends I admit, but the argument being made is that we end up with means in double senses. First, we have means in a simple meaning. We create something without knowing anything about it, but we still invest our hopes in

\textsuperscript{141} Ibid.
\textsuperscript{142} All clones are identical to their predecessors.
\textsuperscript{143} All human cloning will lead to X.
that some outcome will appear. This could be the case of a family raising a natural child. They do not really know anything about its future, but they have high hopes that the child will become an excellent gymnast. They make the child train hard everyday for several hours making the child miss out of its childhood. Of course, they love the child for its own sake and not only because she/he has become a great gymnast. Kant would accept this, because the child is not treated merely as a means. Now, let me present you with my argument of means in double senses. Imagine the same situation, except now the child is a clone. Besides having these expectations the parents now “know” that the child has great potentiality of becoming a great gymnast. And it is precisely this that has the capacity of displacing the treatment of the clone from being an end into a context of treatment primarily as means.

To illustrate this potentiality by another example let me use one of a sports car. If you have an ordinary car that you know makes 150km/h at a maximum speed and makes 0-100 in roughly 12 seconds there is really no point, or even excitement, in testing these limits. But if you have a sports car with a maximum speed of 290 km/h and make 0-100 in 4 seconds, suddenly you are aware of the potentiality. This knowledge gives rise to curiosity and I would say that you are bound to try these potentialities at least once. And this is the case with the cloned human being. Even though we have the knowledge that it is not all in the genes, our reason will not have the power to bridge this fallacy. We will pursue this potentiality. If not deliberately, we will do this without knowing it.

6.3.3 - Cloning and Family

The birth of an infant by asexual reproduction would lead to a new category of people whose bodily form and genetic make-up would be exactly as decided by other humans. This would lead to the establishment of an entirely new type of relationship between the “created” and the “creator”, which has obvious implications for human dignity. Even if there is a normal pregnancy for nine months, the act of selecting a genotype and saying my child really should be the genetic replica of my wife, or of somebody else, is a transformation of the relations between parents and their offspring. Thus, cloning leaves familial relationships in turmoil, rendering incomprehensible our most basic and personal relationships. A girl cloned from her mother would be her mother’s genetic twin; her grandfather would be her genetic father; and her siblings would be her genetic children.

Leaving the discussion about genetic determinism we have the question whether human cloning could affect the clones autonomy and freedom through parental expectations based on the chosen genome. The concern about excessive parental expectations share features with the problem of an open future. The fear is that because the genes chosen have special meaning for the parents, the couple will demand or expect the child to emulate or copy the
life of the gene source. They will guide or mould the child to fit those expectations, thus depriving it of the ability to make its own choices, and degrading it to a means. Given the power of parental influence, the child might come to view itself as having no freedom to act other than as the DNA source would have acted. Yet this fear also founders on the more likely, I believe, possibility that parents, while hoping that their child will follow certain paths and even guiding or encouraging them to do so, will in the end have to accept the cloned child as a separate individual with its own preferences and path in life. This potential conflict of interests is problematic, and I agree with Habermas in that,

“This type of deliberate quality control brings in a new aspect – the instrumentalization of conditionally created human life according to the preferences and value orientations of third parties. Selection is guided by the desired composition of the genome. A decision on existence or non-existence is taken in view of the potential essence.”

In similarity with genetic diagnosis and the conflict between the protection of the life of the unborn child and a weighing of goods by the parents who, while wanting a child, would abstain from implantation if the embryo is found to be deficient with respect to certain health standards one could say that there are a conflict between the choices of the clone and parental interests. And like the case with genetic diagnosis the parents do not find themselves unexpectedly propelled into this conflict; by having a cloned child they accept it from the start.

Let me again use the example of the two families. One family give birth to a natural child reproduced through sexual reproduction. The other family give birth to a clone replicated through reproductive cloning. Both families visit the town hospital at the same time and give birth at the same time. Unfortunately, the nurse happens to mix up the two babies and consequently the two families return home with the wrong child. However, this does not change the fact that the first family (natural reproduction) still think it is their child. Furthermore, when the child grows up it has no knowledge of being a clone. The situation is the same in the other family (replication) except now when this child grows up she or he will think that it is an actual clone. The immediate question here has to be: What implications will this have on the two children? Will it have any implications? I think it will. The problem lies not in the technique of human cloning but in our believes in what human cloning can cause and not cause. That is, the problem mainly lies in our spirit and not in the practice per se. And this is my main point. The family whom think they have a cloned child will, because of their knowledge of the child’s potentiality, invest certain hopes for the future. Moreover, this might trigger further psychological stress (accept thinking it is a clone) because of thinking it has certain potentialities that does not exist.

6.4 - Not a Crime but an Offence

We have now reached the fact were it can be decidedly stated that human cloning is unethical and that it violates human rights by contradicting the principle of equality among human beings and the principle of non-discrimination. How are we then to perceive this violation? I would never say that cloning is a crime against humanity (inhumane) playing in the same league as, e.g. murder, torture, slavery, genocide and so on. Cloning does not rise to that level and I would not go to war against it on that criteria. There is another category you can fit cloning into. I would say that human cloning is an offence against humanity (unhumane) itself. In other words, cloning would fit well in a list of things that should never be done to children, including female genital mutilation, forced labour, non-consensual reproduction, and sterilization. For children, it is a form of child abuse, asexual child abuse. An international ban on human cloning could be the first entry into a new category of international bioethics crimes. The clear implication would be that this category should grow and that effective transnational enforcement mechanisms should be created. On this view, which I think is the proper one, the prospect of human cloning provides the world community with a rare, perhaps unique, opportunity to agree that something that can be done scientifically to change the nature of humanity should not be done. Consequently, even though cloning is not a crime against humanity there are enough reasons for raising objections. This agreement could (and should) serve as a model for much wider international cooperation and regulation in the bioethics and genetics spheres generally.

Let me now turn it the other way round and use crime, not in the sense of inhumane as above, but as a crime if it violates some maxims expressed in the regulatory framework. In this use of crime it becomes much less rigid and not as emotionally charged. As we could see in chapter 5 the regulatory bodies regulating human reproductive cloning from Council of Europe, UNESCO, and WHO all prohibit this technique because it violates human rights and are “contrary to human dignity”. Having this supporting us we can say that with contemporary laws human cloning would be a crime. There are, of course, different magnitudes of crimes. If we were to grade a crime, where e.g. murder would score very high and e.g. shoplifting would end up at the bottom of this scale, human cloning would probably not be ranked as high as murder. But it would certainly score higher than shoplifting. What decides this is the degree of priority we give to human rights and the magnitude of the violation. That is, we must clarify the different notions of belief and desires. R.M. Hare offers a clarification of those prescriptions that constitutes the linguistic use of moral reasoning.145 The notion of belief that earth is round is incompatible with a notion of belief that it is flat. Similarly, the desire that X do not occur is incompatible with the desire that X do occur. In the case of human cloning this can be interpreted as the

incompatibility of the desire for human cloning to not occur with the desire for human cloning to occur. If I make the statement “Let us prohibit human cloning”, to make this statement attractive demands a broad support by the majority of people, a well-grounded consent, in order to make it justifiable. This implies a progress from the prescriptions I accept from out my experience to prescriptions I have to accept from out experiences I would have if I were in somebody else’s position and preferences.\textsuperscript{146} What follows is that if I say that I \textit{should} do something to someone, I am forced to accept that the same thing should be done towards me. However, the respondent may have a strong desire to not being the subject of what I say should be done to her or him, which implies the prescription that I \textit{will} do it. But if I imagine the respondent’s situation the same conclusion would be made by me in that the same thing \textit{shall} be done to me. The result is two incompatible prescriptions – the original “should” and the “shall”. According to Hare “this ‘contradiction in desire’ can only be avoided by abandoning my original ‘should’-judgement”.\textsuperscript{147}

Now we stand before the problem of evaluating who’s preferences that are the strongest. If we sum up Kant’s theory an action is right if, and only if, the agent’s sufficient motive in doing it is the fact that he recognizes it to be required in the circumstances by a right principle of conduct. A principle of conduct is right if, and only if, it would be accepted on its own merits by any rational being, no matter what his special tastes and inclinations might be.\textsuperscript{148} It must therefore be a principle that is acceptable to rational beings simply because of its intrinsic form and not because it is a rule for gaining some desired end. And a principle will be acceptable to all rational beings if, and only if, each could consistently will that all should adopt it and act on it.

Related to human cloning and the claim that it is a crime to allow this technique because it violates human rights, we need to clarify if this is a valid claim. Proponents of human cloning take the stand that it is not. All fears are unfounded and the claim that it poses restrictions on personal freedom and diminishes the uniqueness is based on the fallacy that a person is the product of its genes. In their view human cloning should thus be permitted. Opponents, on the other hand, hold the claim that human cloning violates human rights to be valid. As we know by now the regulatory frameworks regulating human cloning from Council of Europe, UNESCO, and WHO all consider this practice to be contradictory to human dignity. Consequently, it is also a violation to human rights to pursue such practice.

These organisations define dignity pretty much the same way – dignity is all about our integrity, uniqueness, diversity, and indeterminateness. And anything with the potential of threatening these concepts is to be judged as violations. In more analytic terms this would be:

\textsuperscript{146} Ibid, p. 122.
X has Y in virtue of A.
C violates Y because of reducing A.

In virtue of being a member (X) of the human family (A) we have dignity (Y) *per se*. This is something we highly value as a desired end to be upheld and strived for. Human cloning (C) is considered to violate this human right because it reduces our full entity. More precisely, it reduces our integrity, uniqueness, diversity, and indeterminateness. But the regulatory frameworks fail to address in clear terms what it is in human cloning that actually makes it a violation of human rights. Furthermore, these loose definitions of human rights, and human dignity in particular, challenges its own premises by not defining its foundations. This can only result in confusion and uncertainty.

The greatest mistake one can make in prohibiting human cloning upon the premises of its violation of human dignity is, in my view anyway, to make the false deterministic fallacy of proclaiming the importance of integrity, uniqueness, and diversity. Make no mistake; these are all very important aspects in defending human dignity. What I mean is that these would not be violated by the practice of human reproductive cloning. Only a false genetic determinism would support this argument. There is no evidence, and can never be attested, that a cloned human being would actually be less human, i.e. posses less integrity, uniqueness, and diversity. However, in the question of indeterminateness and the right to not be manufactured according to special interests, we have a much stronger case. It is important to have in mind that these are distinct different claims and that only one is correct. Only by recognizing this, without for that sake renouncing the importance of protecting human rights- and dignity, we can once and for all deny the right to human cloning. We can thus say that prohibiting human cloning would be the right action. Not because it rests upon some fundamental right principle of conduct in a universal sense (cause this seems impossible given the different circumstance in which human cloning would be favourable and not), but because this seems to be a more valid claim. This is due to the fact that the future of human cloning and its potential harms (physical and psychological) are wrapped in mystery and the moral right thing to do is thus to take a precautious attitude towards its future development. And given the legal ban on this practice, the only thing supporters of cloning have is interests, not rights. As Ronald Dworkin has said, rights are trumps. If your interests and mine conflict, some weighing up of their relative importance is called for, perhaps leading to some kind of compromise. But if what my interests conflicts with is your right, my interests simply has to give way.

All arguments laid out in this paper have been speculative since we do not know how it will turn out to be if we were to allow human cloning. The whole discussion around human cloning and human rights are speculative and uncertain. But this is a good thing. It is
important to problemize areas that have the potential of changing our whole notion of what is human. We must change the desire of technological development to desires of human developments. The driving force of doing good and not unimpeded technological development must guide us. Ignorance has often put man in difficult situations. To avoid troublesome surprises we need to be cautiousness in our actions.

6.5 - The Act of Caution Must Guide Us: The Precautionary Principle

You can make a pretty sympathetic argument in behalf of infertile couples that cloning is the only way they can reproduce and that they should not be totally foreclosed this method of reproduction. On the other hand, I would argue, cloning is not reproduction but replication and as such it does not deserve the same protection that we give to reproduction and we have to look at it as a unique and separate method.

Therefore, the regulatory framework on human cloning should apply the precautionary principle. We have recently started to do this to every major decision that affects us humans and the environment and to some decisions in medicine as well. The precautionary principle simply states that if something has the potential of great harm, even though it also has the potential for good, the burden of proof should be on those who want to do something to show that the harm can be mitigated and that the good is more likely to occur than the bad. The Swedish Environmental Code defines the precautionary principle as to take precautions “as soon as there are reasons to assume that a activity or action may cause damage or disadvantage to human health or environment.” Thus, by doing this, by letting precaution guide us in situations were there is uncertainty, we should always choose the certain alternative before the uncertain. I think that the discourse of cloning would benefit a lot by use of the precautionary principle to, again, shift the burden of proof to those who wants to do something new and potential harmful instead of the people who wants to try to prevent something from being done. Cause, as you know, we cannot prevent something that has already occurred and say, “Oh, that is horrible. Let us try to prevent more harms from occurring”. Although this interpretation of the precautionary principle is addressed to the prevention of damage or disadvantage to human health and environment, I advocate that we extend this to embrace possible psychological harms. As a matter of fact, this is supported by the Swedish interpretation given to disadvantage to human health as “both physical and psychological effect.”

7 – Epilogue: Not To Be!

“We need at all costs to avoid a defeatist attitude with regard to technology that says that since we can’t do anything to stop or shape developments we don’t like, we shouldn’t bother trying in the first place.”


We live in the era of new biotechnological advances. Discussions of the social, legal, ethical, and scientific aspects of genetic therapy, in vitro fertilization, genetically engineered food, and cloning appear everywhere, from prestigious scientific journals, to television programs, to tabloids. Not only have these discussions captured the public imagination and the interests of scientists, they seem also to have swept many of the members of the bioethics profession away from more mundane issues, such as questions of access to health care, or just distribution of medical resources. But even though this line of technological developments, and now human reproductive cloning in particular, attracts this vast debate it is often burdened with quite shallow arguments from those in favour of human cloning as well as those in opposition to the same.

On the surface, human cloning looks like the perfect solution to end many of society’s problems, but in actuality it has the potential of posing severe side effects. Human cloning is an unethical procedure that has the potential of detrimental negative psychological, as well as physical effects.

Proponents of human cloning occasionally point out that cloned humans are already among us in the form of twins - people with identical sets of DNA - so what is the problem? Besides avoiding the fact that natural twins are always siblings, whereas a clone could be the twin of a parent or grandparent, this observation ignores a crucial moral difference: natural twins arrive as rare creations, not as specifically designed products.

The international consensus is exceptionally precise on human cloning, because it aims to prevent some potential developments that raise the most serious concerns for the future of humanity. The lawmaking process, which is usually accused of being too slow to keep up with scientific advances, has on this occasion overtaken science, because legal provisions are being adopted to prevent this technology that does not yet exist. In this paper I have showed that a problem, however, is that neither Council of Europe, UNESCO, nor WHO define human dignity in their regulatory bodies. All these three organisations
understand dignity as tantamount to uniqueness, integrity, diversity, identity, and indeterminateness. These loose definitions of dignity challenge its own premises by not defining its foundations. This fact opens up the discussion of what it is in human cloning that actually makes it a violation of human rights.

7.1 - Tentative Conclusion

My tentative conclusion, at this point, has to be: Instead of being an uncontrolled, self-regulated evolutionary process, creation of man through reproductive cloning are shifting from being natural to a state of instrumentality where parental interests constitutes what is important. This shift will inevitably lead to the child being a means for some other end (parental interests). However, this is not the same as being subdued into genetic determinism, but the point brought forward in this paper is the violations of the principle of equality among human beings and the principle of non-discrimination. The principle of equality among human beings is violated because in human cloning we encounter a form of man’s domination over man in the form of “creating” another and thus putting those creating the clone in an unacceptable position of control over the clone. The illicit form of human discrimination involved in this procedure comes from the selective and eugenic mentality inherent to the logic of the cloning process. This is true whether or not genetic manipulation of the clone would be possible or legal, and however responsibly that power is exercised.

To create a human being as a manufactured creature, with its characteristics decided to suit the ends of others, is an affront to human dignity. In this sense the clone’s genome constitutes a heavy backpack because of our pre-knowledge of its physical building blocks – or in other words its potentiality. Even though the argument of genetic determinism is a weak one, our subconscious “forces” us to create hopes upon the child because of its potentiality. Thus, creating a child through reproductive cloning deprives our complex nature of the body and spirit of something – Factor X is being reduced. I have argued that a necessary condition for the perception of being free is to be the author of our own actions and aspirations. If this in some way is being restricted then we feel as our “self” is slipping away and replaced by some “other”. In the case of cloning this would mean that the clone believes to be created for a purpose and therefore, in spirit, less free. This argument, however, is not strong enough to argue that human cloning violates the autonomy and freedom of the clone; rather it threatens these fundamental rights. The strong hold is instead on its domination of man over man and its fundamental discriminative idea, which has the potentiality of creating psychological stress and physical side-effects.
It should not be forgotten that what is at stake in some bioethical issues, such as reproductive cloning, is nothing less than the preservation of the identity of the human species. Thus, it is not an exaggeration to say that we are confronted here with the most important decision we will ever make. In other words, it seems clear that, in the case of conflict between the preservation of humankind from harm and the protection of purely financial or scientific interests, international law should give preference to the first option.
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