Reviewer's report

Title: Human Cloning Laws, Human Dignity and the Poverty of the Policy Making Dialogue

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Reviewer: Daryl Pullman

Level of interest: A paper of considerable general medical or scientific interest

Advice on publication: Other (see below)

Preamble:

Professor Caulfield's paper addresses an important issue in the on-going debate over the question of human cloning, namely the role that appeals to human dignity can and/or should play in this discussion. The gist of his article is that appeals to human dignity in this context are often arbitrary in nature, that the concept is ill defined when such appeals are made, and that many of the assumptions that appear to underlie such appeals do not stand up to rational scrutiny. The bulk of the paper is devoted to listing and refuting various spurious arguments against human cloning that invoke some consideration of human dignity. The author acknowledges (p. 11) that many of the points he raises have been noted by others elsewhere. Nevertheless he feels it is necessary to raise them once again because policy makers continue to invoke this unexamined notion in an attempt to justify legal bans on human cloning.

Discretionary revisions:
1) While Professor Caulfield demonstrates that appeals to human dignity are often arbitrary and ill-defined in the context of the human cloning debate, there has been some progress with regard to clarifying the notion of dignity in the broader bioethics literature in recent years. It is now common, for example, to distinguish between two different but related notions of dignity, one a species referenced conception that applies to all human beings qua humanity, and another more particularized version that applies to individual human beings or some sub-set of human beings. These two conceptions have been variously described as ontological and existential, basic and personal, moral and aesthetic, and so forth. One of the short-comings of the current paper is that it offers critiques of various ill defined appeals to human dignity that appear in treatises against human cloning, but it fails to go outside of this literature to examine how the notion is invoked in the wider bioethics literature.

2) At times Professor Caulfield is guilty of the same failing that motivates him to write this piece in the first place. That is, although he does not specify an explicit notion of dignity, he appears to assume some kind of standard of dignity in his counter-claims. For example, he states "An identical twin's dignity is not compromised because of the mere existence of a sibling with an identical genome," and goes on to say that "it is difficult to maintain that human dignity is dependent upon having an unique genome" (p. 6). But what is the operational definition of dignity he has in mind when he makes these assertions? While he may be right in stating that a person's dignity is not contingent on genetic uniqueness, what then is it that gives one dignity? Some hint that a positive conception of dignity might be available is given on p. 5. There the author quotes another commentator to the effect that "aside from the moral debate on whether the embryo is a human
being arguments about human dignity do not hold up well under rational reflection." This is an interesting "aside" because it suggests that at least in the debate about the moral standing of the human embryo there are arguments about human dignity that hold up under rational reflection. We need to know what those substantive considerations might be, and whether or not they might apply as well in the cloning debate. If those same considerations don't stand up to rational scrutiny in the context of the cloning debate we need to know why.

3) A key distinction that needs to be made is that between the process by which reproductive cloning occurs, and the products of that process. In this regard Professor Caulfield states: "Surely the process used to produce an individual is completely irrelevant to the respect and dignity the individual deserves once born" (p.9). While he is certainly correct in stating that the products of cloning technology, namely human clones, would be due the same respect that any other human entity deserves, this does not preclude the possibility that the process itself could be ethically problematic. For example, even though slaves should be treated with dignity and respect one can still maintain that the process of enslavement and the selling of human persons are themselves affronts to the dignity we all share as human beings, and not only to the dignity of individual slaves. These are independent questions. One would never argue that slavery is not ethically problematic because slaves are treated with dignity and respect. This point is especially apposite in the human cloning debate when much concern regarding various reproductive techniques focuses not only on the products of these technologies, but on the process by which these products are produced. Consider the embryonic stem cell debate as a case in point.

4) This last point speaks to a related issue that Professor Caulfield raises regarding whether or not an individual's dignity can be affronted by an act done prior to birth (pp. 7-8). He notes that this question presents particular legal challenges in Canada where individuals have no clear legal standing until born alive. While the question may be particularly vexing from a legal perspective, this is one instance in which the moral question is clearer. The answer is "yes", an individual's dignity can be affronted by an act done prior to birth. In fact Canadian case law presents an example. In an attempt to terminate an unwanted pregnancy, a young woman inserted an air-gun into her uterus and shot a pellet into the brain of her full term fetus. The fetus survived and was born alive at which time the pellet was discovered in the baby's brain. While Canadian law does not grant any legal status to the fetus and hence the woman did not face criminal charges, this is so much the worse for Canadian law. Few would argue that this mother's act performed prior to the birth of her child had no implications for the dignity of her child, or for the rest of us. Although the child might still be treated with dignity and respect after birth and hence its individual dignity would be honored, the basic human dignity in which we all have a stake is affronted if our laws allow that human fetuses have no moral standing whatsoever and are hence subject to whatever capricious activities we might choose to inflict upon them in utero.

Compulsory Revisions:

1) The author needs to be explicit on whether or not he believes the notion of human dignity really has any intrinsic normative force in the modern context, or whether it is just a means for the public in general and policy makers in particular to avoid sectarian religious claims when arguing against human cloning. At times he seems to imply that the concept can and should have normative force such as when he worries that ad hoc appeals could trivialize and degrade the normative value of human dignity (p. 15). In other places he speaks as if human dignity is little more than a secularized version of appeals to religious values. He quotes Dworkin approvingly, for example, to the effect that the public expresses their concerns in "heated and logically inappropriate language" (p. 12). He goes on to note that the public's concerns are often couched in terms of morality and/or religion, and "for lack of a better philosophical argument, it is declared that it [human cloning] infringes human dignity" (p. 13). Further, he suggests that appeals to dignity allow policy makers to avoid more controversial and politically charged rationales such as those based on religious grounds. In short, there seems to be some ambivalence on the author's part as to whether or not human dignity should play a positive
normative role in contemporary debates about human cloning, or if he believes in fact that "a better philosophical argument" will not be forth-coming. Sorting out his own perspective on this key point would no doubt give him a better handle on how he wants to proceed in these matters, and it might help as well to push the debate to a different level.

**Competing interests:**

See confidential comments above.