

HUMAN EMBRYOS, CLONES AND PUBLIC POLICY: A CRITIQUE OF THE CHURCH OF SCOTLAND'S VIEWS

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INTRODUCTION

I shall discuss some views endorsed by the Church of Scotland on the theology, ethics and the appropriate public policy towards research on human embryos and human cloning.¹ These views are, in essence, that both research on human embryos and the cloning of human beings are contrary to Christianity, are immoral and, most significantly, should be illegal. I shall argue that none of these views is substantiated.

THE VIEWS ON EMBRYOLOGY AND ON RESEARCH ON HUMAN EMBRYOS OF THE CHURCH OF SCOTLAND

The thinking of the Church on human embryos is presented in **Pre-conceived Ideas: A Christian Perspective of IVF and Embryology** (1996), which is the report of the Study Group on Human Fertilisation and Embryology of the Board of Social Responsibility of the Church of Scotland.² The position of

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¹ See *McLachlan and Swales 2000* for a related discussion of the position of the Church of Scotland on surrogate motherhood.

² The Study Group on Human Fertilisation and Embryology was convened by the Rev. David Easton and the Board of Social Responsibility was convened by the Rev. William Wallace. The report was presented to the General Assembly of the Church of

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the Study Group – as accepted by the General Assembly – is as follows. We should not do research on persons unless it is for their benefit and/or with their consent. The embryo is a person or, at least (the report is equivocal on this point), a potential person. We should not do research on human embryos unless it is for their benefit (since they cannot give consent). It is, in their view, wrong to do and it should be illegal to do it. The sort of research envisaged will, quite clearly, not be in the interest of the embryos concerned: indeed, it will be, directly or indirectly, fatal for them.

It is written:

According to the theological and ethical position stated [in the report], the human embryo must be regarded as an actual person, and regarded as a person at all stages of development from the moment of conception. Therefore all treatment of a human embryo which is not for the benefit of that embryo is morally wrong and as such all research on human embryos is morally wrong.
(Church of Scotland 1996, p. 62)

We must, I agree, treat embryos with respect. We should not wantonly create nor wantonly destroy them. But to say this is not to say that embryos are persons nor that they have rights. After, all, we must respect, for instance, cats, dogs and trees and we have duties concerning these things even if they do not have rights and although they are not persons.³

The Study Group gives its views not merely on the theology and ethics of embryology but on public policy regarding it. In the conclusion of their report, it: ‘Affirms the sanctity of the human embryo from conception, and urges that its special nature be recognised in law’ and: ‘Given that the law allows research on human embryos, welcomes the limitation of research to 14 days, and opposes any extension of that limit.’ (Church of Scotland 1996, p. 81)

Scotland in 1996 and there was a deliverance passed commending it. The conclusions of the report were all passed as deliverances.

³ *The Warnock Committee (1984) took the view that the pre-implantation embryo has not achieved the same moral or legal status as the fully formed fetus. This view seems to have been accepted by Parliament in the Human Fertilisation and Embryology Act (1990). For a reasonably comprehensive account of the range of the debate, see Green 2001. See also Fox 2000 and McLachlan 2002a and 2002b.*

AN APPRAISAL OF THE KERNEL OF THE CHURCH OF SCOTLAND'S PHILOSOPHY OF EMBRYOLOGY

The essence of the Church of Scotland's case can be represented as follows:

- A): the embryo is a potential person.
- B): because it is a potential person, the embryo should be treated as if it already were a person.
- C): because fetuses and persons are at different ends of a continuum in which there are no discrete nor distinct cut-off points, fetuses and persons should be treated the same.

Even if A) were true, B) is false and C) is false. However, A) is also false.

First of all, consider C). Consider, for instance, differential treatment with respect to age. In terms of age, all living people are at different points on a continuum in which there are no discrete cut-off points. Nonetheless, it is often ethically appropriate for people to treat other people differently in terms of age even in the absence of unequivocal ethical boundaries. Similarly, it is often appropriate to have legal differences between the treatment of people of different ages even in the absence of unequivocal relevant ethical criteria for discriminating. For instance, it is quite appropriate that people have to be of a certain age before they are allowed to do various things, for instance, to get married, to vote in general elections, to purchase tobacco, to purchase alcohol and to drive heavy goods vehicles. The age need not, of course, be the same for all the activities. Similarly, it need not be the same for all people for each of the particular activities but there are obvious practical advantages in making it the same.

Should the age when people are allowed to marry be, say, 17 years? Why should it be 17 rather than 17 and a half years or 17 years and three quarters? Why should it be 17 years rather than 16 years and 364 days? What ethical landmark is passed after one more day? None at all. It is crucially important that a line is drawn somewhere. It is not crucially important precisely where it is drawn. It might be crucially important where, vaguely, the line is drawn. Wherever the line is drawn, it will, in relation to the maturity of some particular young people, be set at too old an age and, in relation to the immaturity of some other particular young people, it will be set at too young an age. Lines often must be drawn somewhere. The absence of specific

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ethical criteria should not, in all cases, prevent the drawing of legal lines. C) is false.

Even if there were no laws against having sex with very young people, it would still be immoral to do so. It would be – quite clearly! – wrong in all cases for people over, say, twenty years of age to have sexual intercourse with, say, seven-year-olds. However, would it be immoral in all cases for them to have sex with people aged virtually but not quite eighteen, seventeen, fifteen or sixteen years? I don't know. Ethically, distinctions must be made and, often, one must discriminate even in the absence of obvious moral landmarks.

According to the report:

The embryo contains within its genetic code all that is needed to become a person. Only its development is necessary. That development is to be seen not as a growth into that which it was not before, but rather as the fulfilment of that which it already is. There is therefore continuity of identity from zygote to fetus, from fetus to new-born child, and from new-born child to adult.

(Church of Scotland 1996, p. 56)

Particular tadpoles, if they develop normally, turn into particular frogs. There is thus, in a sense, a continuity of identity between tadpoles and frogs. However, there are manifest differences between tadpoles and frogs, including between particular frogs which were once particular tadpoles. We are not required by reason nor morality to treat tadpoles as if they were frogs nor frogs as if they were really tadpoles. One might, without acting wrongly or absurdly, treat frogs and tadpoles differently and treat frogs as if they were frogs and tadpoles as if they were tadpoles. Similarly, it is not a requirement of reason nor morality nor of Christianity that one treats human adults as if they were human embryos nor human embryos as if they were, say, babies or children. Ashes to ashes, dust to dust – there is, of course, a continuity, but the differences matter too and matter hugely.

In any case, it is false to say that embryos contain within their genetic code all that is needed to become persons. A) is false. Embryos are not potential persons: they are actual undeveloped human bodies and potential mature human bodies. Bodies are not persons. (See McLachlan 2002a and 2002b.) Persons can have bodies but bodies are not persons nor are persons bodies. It

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is persons – not their bodies – who act and who make choices and have obligations and rights.

According to the report: ‘The use of various criteria to define personhood and establish the point at which an embryo or fetus becomes a person is arbitrary and subjective.’ (Church of Scotland 1996, p. 56) This claim, I would suggest, embodies a category error. It is not subjective nor arbitrary to try to establish at what point an immature body becomes a person: it is absurd because bodies – no matter how mature they are – are not and never can become persons. I suspect that is it even false to say that an embryo contains within its genetic code all that is needed to become a mature human body. It might contain all the genetic material which it ever will contain and all the genetic material that is required but immature bodies require more than genetic material in order to become mature human bodies.⁴

Even if a human embryo contains the genetic components that are necessary to turn it into a mature human body, this is not a reason for treating an embryo as if it already were a mature human body. B) is false. We should treat things as what they are rather than what they were or will be. My body, like your body, has the potential to become a corpse. It might not become a corpse: it might be blown to smithereens or saved from corruption by the Second Coming. It is a potential corpse but this is not a reason for treating my body nor your body as if they already were corpses.

PERSONS, GENES AND CONCEPTUSES

The importance given to ‘genes’ and to physicality, particularly in a document which has a religious background, is startling. Even if there is a genetic continuity between embryos and the adult bodies of human beings, it does not follow that there are no ethical nor theological distinctions between embryos and adult human beings nor that differences of treatment of them cannot be ethically justified.

The suggestion is made in the report that: ‘... the worth of the embryo lies in the fact that it is created in God’s image, is genetically complete, and is as much the object of God’s concern as the fetus, the child, or the adult...’. (Church of Scotland 1996, p. 59) Rereading Genesis, I cannot find the claim

⁴ See, for instance, Ridley 2003 and King 2003.

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that embryos – whether or not human ones – were created in God’s image. When it is written that humankind – as opposed to the non-human animals – was created in God’s image, I do not think that the reference is to our carnality but to some other unspecified feature or features. I adhere to the view that our freedom of the will and our capacity to choose to do good or to do evil is what makes us like God and unlike other animals.⁵ To suggest that God is equally concerned with embryos and mature human bodies because both have an equal allowance of genetic material seems to imply that God’s love is for genes rather than people. Such a notion seems very odd and disturbing.

According to the report: ‘It can further be argued that if we feel unable to affirm that every conceptus is a person, Psalm 139 makes it clear that in some cases at least there is a continuity of identity from conceptus to adult’ (Church of Scotland 1996, p. 59). Now, a ‘conceptus’ is a fertilised egg. I most certainly am not able to affirm that an egg, whether fertilised or not, is a person! It might or might not become the body of one. Psalm 139 gives no support at all to the views on embryology and on public policy as suggested in the Church of Scotland’s report. What it says in Psalm 139 (verses 15 and 16) is, in the words of King James’s Authorised Version:

15 My substance was not hid from thee, when I was made in secret, and curiously wrought in the lowest parts of the earth.

16 Thine eyes did see my substance, yet being imperfect; and in thy book all my members were written, which in continuation were fashioned, when as yet there was none of them.

This does not establish the point at all. God is all-knowing and all-seeing. God knows and sees now, before it has been made what, for instance, the new Ford Fiesta will look like no less than he knew David before his birth, before, indeed, his conception. What follows from that? It does not follow that eggs

⁵ See Broadie 2000, for a brilliant, succinct and fascinating account of – among other central issues in Scottish philosophy – the differences between the philosophies of human action of David Hume and Thomas Reid. It is interesting to note that the views of the Study Group seem more in accord with those of Hume, the celebrated atheist and mine are more like those of Thomas Reid. Reid, as well as being a better although not a better-known philosopher than Hume was also a Church of Scotland minister.

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are persons. It does not follow that research on Ford Fiestas nor on human embryos should be illegal.

The report, in similar vein also says:

Despite natural wastage and the fact that a high proportion of ova do not survive and mature, from a biblical point of view human life begins at conception, at which point the human embryo is genetically complete. The Psalmist traces his identity from adulthood back to his conception (Psalm 139). Jeremiah speaks of the fact that even before he was formed in his mother's womb, God had chosen him to be a prophet (Jeremiah 1:5). (Church of Scotland 1996, p. 61)

To say that human life begins at conception is not the same as saying that a person begins at conception nor that personal identity starts at conception. Indeed, the point of the verses already quoted from Psalm 139 as well as Jeremiah 1:5 seems to be quite opposite to the view of the Church of Scotland that personhood starts at conception. Jeremiah 1:5 is, again quoting from the Authorised Version, as follows: 'Before I formed thee in the belly I knew thee: and before thou camest forth out of the womb I sanctified thee and I ordained thee a prophet unto the nations'. This seems to me to support my own view that persons and their bodies are distinct rather than the view expressed in the report that persons begin at conception (and end at death?). I think that persons rather than their bodies are moral agents and are the bearers of moral rights. Persons need not have currently existing human bodies in order to have rights. For instance, Donald Dewar the person still has moral rights even although he no longer has a living human body. He has, for instance, the right not to be slandered and, correspondingly, we have a duty not to slander him. Similarly, we have duties towards the persons whose bodies might in future years walk on this planet. I think that those people currently have rights even although they do not currently have live human bodies nor even the embryos of them.⁶

Particular human bodies have a particular physical origination at their conception: it is true but not particularly biblical nor significant to say this. That human life begins at conception is not, for all that is shown in the report, a particularly 'biblical' point of view: nor is it at all clear what is being claimed when it is said that human life – as opposed to what? – begins at

⁶ See *McLachlan 2002a*.

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conception. For neither Christ, Adam nor Eve did human life begin at conception. Consider clones. If someone were born whose body was cloned from another's body, then that person would be due as much moral respect as any other person. Yet, for such a person, human life would not have begun at conception: there would have been no conception.

THE CHURCH OF SCOTLAND AND BIO-ETHICS SINCE 1996

Pre-conceived Ideas was published in 1996 under the auspices of the Board of Social Responsibility. Since then, with Donald Bruce as its Director, the Church of Scotland's 'Society, Religion and Technology Project' (S.R.T.) of the Board of National Mission has taken over as the Church of Scotland's most vocal outlet for its accredited views on bio-ethics. It has been particularly vociferous in relation to human cloning, which it abhors. The S.R.T. has been very active politically with highly effective lobbying. It is favourable to the **Report on the Ethical Implications of Biotechnology**, produced by the Advisers to the President of the European Commission, a report which it seems possibly to have influenced. Its press and other media relations and output are highly sophisticated.⁷

THE CHURCH OF SCOTLAND, THE WORLD, THE EUROPEAN UNION AND CLONING

According to the Church of Scotland, the cloning of human beings is unethical and it should be a criminal offence not only in the UK but everywhere in the world.⁸ The General Assembly of the Church of Scotland, on the 22 May 1997, passed the motion that it would: 'Reaffirm their belief in the basic dignity and uniqueness of each human being under God' and: 'Express the strongest possible opposition to the cloning of human beings and

⁷ See, for instance its web-site: (<http://dspace.dial.pipex.com/srtscot/gmanimal.htm>) It has produced reports for the General Assembly and a book: **Engineering Genesis**, Bruce and Bruce 1998.

⁸ In the past when the Church of Scotland lobbied successfully to have, for instance witchcraft, bestiality and adultery made crimes – and capital crimes at that – it stopped short of world-wide bans. See Maxwell-Stuart 2001, pp. 35-45.

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urge Her Majesty's Government to press for a comprehensive international treaty to ban it worldwide'.⁹

It is worth relating the Church's position to the prevailing views in the European Union. For instance the preamble of the resolution on cloning, which was passed by the European parliament on 13 March 1997, is as follows:

... the cloning of human beings ... cannot under any circumstances be justified or tolerated by any society, because it is a serious violation of fundamental human rights and is contrary to the principle of equality of human beings as it permits a eugenic and racist selection of the human race, it offends against human dignity.... [Furthermore, it is the case that] each individual has a right to his or her own genetic identity and that human cloning is, and must continue to be, prohibited.¹⁰

In their **Report on the Ethical Implications of Biotechnology**, the Advisers to the President of the European Commission said of reproductive human cloning that: 'Considerations of instrumentalization and eugenics render any such acts ethically unacceptable. In addition, since these techniques entail increased potential risks, safety considerations constitute another ethical objection' (Advisers 1997, p. 352).

HARRIS ON CLONING

Harris says of the preamble to the resolution of the European Parliament: 'These statements are ... thin on argument and rationale; they appear to have been plucked from the air to justify an instant reaction. There are vague references to "human rights" or "basic principles" with little or no attempt to explain what those principles are, or to indicate how they might apply to cloning' (Harris 1997, p. 335).

The case put in the preamble and in the Advisers' report is sketchy and crude. For instance, consider the reference to 'racism' and 'eugenics'. These terms are used more as abusive slogans for attacking cloning than as conceptual

⁹ See: <http://dspace.dial.pipex.com/srtscot/ga97clon.htm>. See also 'Cloning Animals and Humans', *Supplementary Reports to the Church of Scotland's General Assembly, May 1997*, p. 36/22, and *Board of National Mission deliverances 35 and 36*, p. 16.

¹⁰ *The European Parliament. The motion is dated 11 March 1997.*

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tools for analysing it. One might practice 'eugenics' and 'racist selection' by means of normal sexual intercourse no less than by cloning. If a man chooses to have sexual intercourse only with his wife, then he genetically determines and controls the racial origins of any resultant children no less than if he had children through the cloning of his body. Let us not legislate concerning the motives of people for having children, however they have them. It is worth noting that the Church of Scotland does not, as far as I am aware, promote this particular 'anti-racist' argument.

It is potentially confusing to talk about the cloning of human beings. In this context, distinctions can usefully be made between: persons and their bodies; persons and their minds; persons and their personalities; and, some people would say, persons and their souls. Insofar as cloning might be possible in relation to human beings, it is their bodies and only their bodies that are clonable.

Human cloned bodies would be – and in the case of natural identical twinned bodies actually are – bodies which share the same genetic make-up. If two or more people have bodies with the same genetic make-up, then the persons who have these bodies are – just as much as any other persons – unique persons, if persons are unique. They are, for instance, responsible for their own actions no less than any other persons are. As Harris says:

Cloning does not produce identical copies of the same individual person. It can only produce identical copies of the same genotype. Our experience of identical twins demonstrates that each is a separate individual with his or her own character, preferences and so on. Although there is some evidence of striking similarities with respect to these factors in twins, there is no question but that each twin is a distinct individual, as independent and as free as anyone else. ... We do not feel apprehensive when natural twins are born, why should we when twins are deliberately created?.

(Harris 1997, p. 353)

Harris suggests that we should not feel apprehensive and, more importantly, that no justification has been given for making human cloning illegal.¹¹ The

¹¹ See also Harris 1998 and McLachlan 2002a. For another expression of a view different from Harris's and mine, see Gogarty 2003.

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pronouncements of the Church of Scotland and of Donald Bruce provide, as we shall see, no such justification.

ETHICS, LAW, WISDOM AND RISK

There are various actions that it would be inappropriate to make illegal – adultery, for instance, and fornication – even if they are ethically unacceptable. The relevant questions here are: is it ethically acceptable to clone human bodies?; whether or not it is ethically acceptable to do so, should it be legal to clone human bodies? I think that, in both cases, the appropriate answer is: yes. It is ethically acceptable to clone human bodies and to do so should be legal. Whether, in any particular circumstances, it would be wise to clone a human body is another question altogether. It would be unwise to try to make unwise a criminal offence.

One of the suggested ethical objections to human cloning is that it is risky. In the Church of Scotland's magazine, **Life and Work**, Donald Bruce says it is very unlikely that: '... one would get reproductive human cloning right first time and every time. It would be criminally irresponsible to try. You cannot have a deformed baby "put down" the way you can a suffering lamb' (Bruce 2002, p. 21). I would agree with Bruce that, in the current state of knowledge, it might well be unwise to try to clone a human body. In the present context, it would probably be unethical to do so just as, in many contexts, it might be, for various reasons, unethical for some people to have babies after the normal fashion. However, it does not follow that human cloning should be a crime.

Cloning, just like normal sexual intercourse, might – whether predictably or not – result in the birth of a deformed baby. This is not an argument against either sexual intercourse or cloning in principle as a method of reproduction. Furthermore, since we do not say that it should be a criminal offence to produce by way of normal sexual intercourse – whether or not predictably – a deformed baby there is no obvious reason for saying that it should be a crime to produce a deformed baby by way of cloning. Why should such a thing be criminalised? Who is harmed by the act? The cloned baby? Is it always better not to have been born at all than to have been born deformed? Surely not! Perhaps it should be a crime to deform a baby that otherwise would have not been deformed and would yet have been born but that is another matter entirely.

THE UNIQUENESS OF PERSONS AND THE SUPPOSED RIGHT TO GENETIC UNIQUENESS

It says in 'A Supplementary Report to the 1997 General Assembly' from the Society, Religion and Technology Project, Board of National Mission:

The Church of Scotland has already stated that to clone human beings would be ethically unacceptable as a matter of principle. On principle, to replicate any human technologically is a violation of the basic dignity and uniqueness of each human being made in God's image, of what God has given to that individual to no one else.¹²

I agree – and even if I did not I would be prepared to accept for the sake of the argument – that each of us is created in God's image. However, I cannot see why the cloning of a human body is a violation of anyone's 'basic dignity and uniqueness'. I – the person – have and no one else has, for instance, a unique relationship to the particular body of which the fingers are now typing this sentence on my word processor, to which I also have a unique but less intimate and less profound relationship. Similarly, I have a unique responsibility for my own actions just as you have for yours. People, when they are driving motor vehicles are, uniquely, responsible for some of the movements of the particular vehicles that they are driving. Whether or not the vehicles themselves are physically unique is irrelevant.

Given that twins with the same genetic make-up are natural occurrences (and for other reasons as well), it does not seem to me to be plausible to say that we have a moral right – far less a 'natural' moral right – to unique genetic make-ups. There is much debate about what is meant by a 'moral right' and about what, if anything, our moral rights are grounded upon. The position of the Church of Scotland with regard to the answers to these questions is not made clear. Some people argue that one's rights are related to what one wants or what one needs. For instance, Savulescu writes: 'What constitutes a right is a complex question. On one interpretation, rights protect interests. This implies that a right not to be born would exist if a child had an interest in not being born' (Savulescu 2002, p. 65). We do not need to be genetically unique. We can even have – if, say, we needed an organ transplant – an interest in not being genetically unique. Not everyone wants to be genetically

¹² See: <http://dSPACE.dial.pipex.com/srtscot/ga97clon.htm>.

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unique. Most people, I suspect, don't care whether they are unique or not: they do not think about the matter. Manifestly, those who want to have their bodies cloned do not want genetic uniqueness. Those whose bodies were the result of cloning cannot be presumed to want not to be born.

I take a different approach to rights to the one outlined by Savulescu. In my view, rights are logically related to duties.¹³ The rights of one person are either the absences of particular duties – as, say, when one has a right (of action) to stand on one's head – or else they correspond to the duties of another person or agency (or persons or agencies) as when one has, say, a right (of recipience) to £5 or to life. For instance, I have a natural right to life insofar as it is the duty of all others not to kill me (just as I have a duty not to kill them). I have a (non-natural) moral right to receive £5 if, say, I loaned someone five pounds or if, say, the electricity company over-charged me by £5. On this analysis of rights, one might have rights which one did not need or want. Furthermore, that which we want or need does not automatically become that which others have a moral duty to provide for us and, thereby, that which we have a moral right to receive. For instance, one might want sex; one might even need sex: however, it would not follow that it was necessarily the duty of some person or agency to provide you with sex. A person's wants, interests or needs do not automatically generate particular reflected rights for that person.

On the basis of this duty-based analysis of rights, it is again implausible to claim that people have a right to genetic uniqueness. If you claim to have a right (of recipience) to be genetically unique, it is not clear what you would be claiming as the corresponding duty. It is not clear who or what are being cited as the bearers of the putative duty. Only if all other people have a duty not to have a body with the same genetic make up as mine could it be my natural right that no one else has a body with the same genetic make-up as mine. However, there could be no reason for thinking that all other people have such a duty. If someone had such a body – by chance, by genetic manipulation or whatever – then should we say that he has a duty to cease living in order to preserve my genetic uniqueness? Should I cease living in order to preserve his? The suggestion is implausible.

¹³ *On the relationship between rights and duties see Raphael 1971, p. 68 and O'Neill 2002, pp. 78-82. See also: McLachlan 1973; 1997a: and 1998. See also Freedman 1991 and Campbell et al 1986.*

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I was one of twins but my twin miscarried. If we both had the same genetic make-up, how could we both have a right and an equal right to have it uniquely? How could we simultaneously have a duty and an equal duty not to have it? It is not apparent that we could.

Donald Bruce says, when trying to show 'Why the Cloning of Humans is Ethically Unacceptable' that: 'Christians would see this as a violation of the uniqueness of a human life, which God has given to each of us and to no one else'.¹⁴ However, Bruce gives no reason at all for suggesting that it is a tenet of Christianity that God gave each one of us – other, of course, than identical twins – unique gene-sets. The notion seems to me to be a groundless superstition. We do not require to have such unique gene-sets in order to lead unique lives or, rather, to live uniquely similar lives. Each and every human being deserves human dignity but we deserve this dignity whether or not we have non-identical gene-sets. We can be unique as individual persons and have, for instance, unique souls without being uniquely genetically branded. God can identify each and every one of us without recourse to the customization of our flesh.

I do not think that we have a right to bodily uniqueness. However, our bodies might be physically unique whether or not we have a right (of recipience) to such uniqueness.¹⁵ Furthermore, human cloning is not incompatible with bodily uniqueness. The Church of Scotland's representatives seem to be bedazzled and bemused by the very thought of genes. They attach a sort of mystical and misplaced importance to them.¹⁶ Cloned bodies are not necessarily identical bodies. For instance, identical twins do not have identical finger-prints.¹⁷ Bodies are causally affected by factors other than

¹⁴ See: <http://dspace.dial.pipex.com/srtscot/clonhum2.htm>.

¹⁵ *We have, of course, a right of action to genetic uniqueness: we are not dutibound not to be genetically unique.*

¹⁶ *Bodies and clones of that body should not be thought of as being like, say, reading lists and photocopies of reading lists. According to Ridley, it is also a mistake to regard genes as being like the blue-prints of a body: genes, he suggests are more like recipes. Dishes made from the same recipe are not always identical. See Ridley 2003.*

¹⁷ *I have argued elsewhere that even if people do have identical finger-prints, it is not known nor it is knowable either a priori or a posteriori that they do. It is mere superstition to say that each person must have a unique set of finger-prints (or, by the*

their genes.¹⁸ This is particularly so in the case of cloned bodies since, unlike with natural twins, they would develop in different wombs.

THE OCCURRENCE OF TWINS AND THE PRODUCTION OF CLONES

Bruce is right to say that deliberate cloning is not necessarily morally equivalent to the occurrence of natural twins. That which happens should often be distinguished from that which is done even when the outcomes are identical.¹⁹ For instance, it might be a good outcome were, say, an aged and suffering relative to die, but a bad action to kill her. Many people would say that Judas's betrayal of Christ was a bad action – one in breach of Judas's duty of loyalty to his friend and Master – however good and glorious they consider Christ's consequent crucifixion and its aftermath to have been. However, it does not follow that cloning is wrong. If you say people have a duty not to clone human bodies, then you will be asked what the grounds of such a suggested duty are. It cannot be people's natural right to genetic uniqueness since there is no such natural right. By definition, the natural rights of each person are the same as those of all people, including twins. What could the grounds of such a suggested duty be?

According to Donald Bruce:

The mere existence of 'identical' twins cannot be cited to justify the practice of cloning. ... it is not the genetic identity that is the crucial point but the human act of control, and it is this element of control which

same reasoning, a unique set of genes or any other physical feature or arrangement of features). See McLachlan 1995.

¹⁸ Lederberg makes the very interesting point that we must look beyond the human genome as the cause of our bodily states, features and conditions since: '... much of the biological composition of our bodies consists of genomes other than the human. Multitudes of bacteria and viruses occupy our skin, our mucous membranes and our intestinal tract' (Lederberg 2003, p. 15). He goes on to say that: 'It would thus broaden our philosophical horizons if we thought of a human as more than an organism. It is a super-organism with an extended genome that includes not only its own cells, but also the fluctuating microbial genome set of bacteria and viruses which share that body space' (2003, p. 15).

¹⁹ See McLachlan and Swales 1999.

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provides the fundamental ethical case against human cloning. ... Such control by one human over another is incompatible with the ethical notion of human freedom, in the sense that each individual's genetic identity should be inherently unpredictable and unplanned.²⁰

Consider also the following claims made by him in **Life and Work**:

Cloning is a deliberate act where someone takes the genetic composition of another person and makes a new individual with the same genes. [An] intrinsic ethical objection to human cloning is that no human being should be given such power to predetermine another person's complete genetics. ... Our genes remain fixed and unalterable. It is an inappropriate power to give to any human the power to pre-determine them.
(Bruce 2002, p. 21)

Notice that, pace Bruce, the debate is not about what powers people ought to have or ought to be given. Perhaps it would be better if no one had the power to produce cloned bodies. Perhaps, too, it would be better if some people did not have the power to have, in the normal way, children. The relevant questions are, given the some people might have the ability to clone human bodies: would it be necessarily immoral to exercise such power?; should it be illegal to do so? To both questions, the correct answer is, I think: no. Nothing that the Church of Scotland or its representatives say substantiates the contrary positions.

Why should each individual's genetic identity be inherently unpredictable and unplanned? Bruce does not say. If you have sex with and only with your spouse then the genetic make-up of any children that you have will be, to an extent, predictable and planned. The genes of your children will be determined by your actions no less than if their bodies were cloned. In both cases, your children will have no more nor less choice over what their genes will be. Human freedom is about the capability of persons as persons to chose what their actions will be: it is not about the particular genetic make up of their bodies nor of whether their gene-sets were in any sense chosen for them or allocated to them totally randomly.

²⁰ See: <http://dspace.dial.pipex.com/srtscot/clonhum2.htm>.

CHRISTIANITY AND KANTIANISM

In relation to instrumentality and human cloning, Donald Bruce says on the SRT Project's web-site: 'To replicate any human being technologically is a fundamentally instrumental act towards two unique individuals – the one from whom the clone is taken and the clone itself'.²¹ There is a confusion here between (unique) persons and their (unique or non-unique) bodies. Cloning can certainly be seen as the instrumental use of parts of a human body in order, deliberately, to produce another (genetically identical) body. However, it is not apparent that this instrumental use of genetic material is necessarily the abuse of a person. What person is being abused? Consider the person whose body is the source of the genetic material. Why should we say that this person is being abused and/or exploited? What if permission were given by the person for the procedure? Consider the person whose body the copied genetic material might serve to produce. Why should one say that this person is being ill-treated? It is not credible to say that oblivion would be preferable to life with a non-unique gene-set.

Consider Bruce's argument in conjunction with the following claim from the previously discussed report of the Church of Scotland's Study Group on Human Fertilisation and Embryology:

At every stage of life a human being must be treated as a person, enjoying a unique status and of supreme value to God. No person can rightly be treated as a means to an end. If we accord to the human embryo the full rights of a person, then all research on human embryos must be morally wrong.

(Church of Scotland 1996, p. 62)

This is not so much Christianity as a misunderstanding and a misapplication of Kantianism. (See Acton 1970 and Harris 1997.) People can be rightly treated as means to an end: this is not seriously disputed. That they must not be treated merely as that is Kant's contention. To treat a body – rather than a person – as an end in itself, even to treat it merely as that, can sometimes be an appropriate thing to do. Not all research on human embryos is the wrongful treatment of a person: at least, the arguments of the Church of Scotland's study group do not show that it is. Furthermore, and more importantly, they do not show that – whether or not it is morally wrong – it

²¹ See: <http://dSPACE.dial.pipex.com/srtscot/clonhum2.htm>.

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should be illegal. For instance, suicide might be, as Kant contends, always morally wrong. Whether or not it should always (or ever) be illegal is another matter.

One might, in my view, obey Christ's injunction to love God and love one's neighbour as one's self and support research on human embryos. Persons – not embryos nor any other sort of bodies – are our neighbours. Christopher Reeve, the paralysed actor who played the part of Superman, is our neighbour. It is difficult for me to see how I could love him as I love myself and yet seek to thwart research that might help him to walk again.

It says too in the report:

We believe that everyone is created in the image of God and is called in Christ to manifest that likeness. Each person is loved by God and is of supreme value. As such, each person, irrespective of who he or she is, enjoys equality of dignity and status with every other person before God and must be treated with appropriate respect.
(Church of Scotland 1996, p. 9)

I, as a member of the Church of Scotland, believe too that everyone is created in the image of God and is called in Christ to manifest that likeness. I do not believe that each embryo is created in the image of God. Every person, of course, must be treated with appropriate respect. This is a tautology even if an important one. However, what counts as appropriate respect (as well as what counts as a person) is precisely what is at issue here. I deny that the arguments of the report show that research on human embryos is inconsistent with the respect that it is appropriate to accord to persons.

CONCLUSION

There is room for much debate about the proper relationship between law and ethics as well as between religion and law and between religion and ethics.²²

²² See, for instance, *McHale and Fox with Murphy 1991, chapter 2; Brazier 1992, chapters 2 and 22; and McLachlan 1997b. Religious commandments – think, for instance, of the famous Ten – are what they are: commandments. They are not ethical principles. They are not assertions of what is the case: they are neither true nor false. (See McLachlan 1979.) 'Keep off the grass', for instance, is neither true nor false.*

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Ethics and politics are distinct from each other and are distinct from religion, particularly when that religion is Christianity. Christianity is a religion of salvation: it is not, in any straight-forward sense, a programme for political action nor even a code of ethics. Religious, ethical and political positions need to be defended in their own terms even if it turns out – as it sometimes but not invariably does – that there is an affinity between some particular sound religious and sound ethical and/or political positions. For instance, the Church of Scotland is opposed to sins but is not thereby wedded to the view that all sins *qua* sins should be crimes. It is a sin, let us say, to commit adultery, to covet one's neighbour's ass and to fail to honour one's mother and father. It does not follow that these things should be, nor that we should strive to make them, crimes. Even if human cloning and research on human embryos were sinful, it does not follow that they should be illegal. The wisdom of making them illegal, particularly in a 'multi-cultural' society, would need to be established in secular terms.

In general, the derivation of ethical and/or political positions from Christianity is problematical. In particular, the views of the Church of Scotland on the ethics and appropriate legal status of human cloning and of research on human embryos cannot readily be shown to follow from an acceptance of Christianity. I would insist that my own views as here expressed are no less Christian than the official Church of Scotland ones are. Of more importance and of more general interest and concern, the arguments of the Church on human cloning and research on embryos are weak ones, whether or not they are particularly congruent with Christianity. In relation to the theology and ethics of cloning, one might simply 'agree to differ' with the Church of Scotland's positions. However, when these views concern the criminal law, they impinge on all of us and, insofar as they are unreasonable, they should be opposed.

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Commands are, rather, wise or un-wise and authoritative or non-authoritative. 'Thou shalt not' does not mean the same as 'It is morally wrong to...'

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