



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES

**PROHIBITION OF HUMAN CLONING
FOR REPRODUCTION AND THE
REGULATION OF HUMAN EMBRYO
RESEARCH AMENDMENT BILL 2006**

Second Reading

SPEECH

Wednesday, 6 December 2006

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

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| Date | Wednesday, 6 December 2006 | Source | House |
| Page | 46 | Proof | No |
| Questioner | | Responder | |
| Speaker | Andrews, Kevin, MP | Question No. | |

Mr ANDREWS (Menzies—Minister for Employment and Workplace Relations and Minister Assisting the Prime Minister for the Public Service) (12.32 pm)—One year ago, the committee appointed to inquire into the nation's human cloning legislation reported to the Australian government. The committee, chaired by the late Mr John Lockhart, proposed to allow embryos to be created specifically for the purpose of destructive scientific research. This proposal goes far beyond the existing situation whereby embryos left over from IVF programs can be used, under certain circumstances, for destructive research. It also reverses the clear intention of the parliament in 2002 when it rejected such a pathway. As the then Attorney-General, Daryl Williams, stated at the conclusion of the parliamentary debate, all members had 'unanimously agreed that a ban on human cloning and other unacceptable practices is crucial'. In voting to ban human cloning, the parliament had clearly included procedures and research involving somatic cell nuclear transfer, SCNT. As the then Minister for Health, Senator Patterson, said, the legislation's definition of embryo:

... encompasses all embryos, regardless of how they were created ... This includes embryos created by somatic cell nuclear transfer ...

The committee's terms of reference repeated the requirements for the review, as set out in the human cloning legislation. Specifically, the committee was asked to review the legislation, taking into account: developments in technology in relation to assisted reproductive technology; developments in medical research and scientific research and the potential therapeutic applications of such research; community standards; and the applicability of establishing a national stem cell bank. In other words, the committee was charged to examine scientific and technical developments on the one hand, and community standards on the other. In particular, it was asked to consider whether there had been scientific developments or changes in community standards that could justify a retreat from the clear rejection of human cloning, however performed.

Having read the Lockhart report and much subsequent scientific research literature, I believe that the committee has failed to adduce any adequate evidence that would justify overturning the ban on the deliberate creation of embryos, including by SCNT, for destructive research. I therefore oppose this bill. I also oppose this bill for a more critical reason—namely, that by passing this bill the Parliament of Australia will legitimise the treatment of humans as commodities. As Frank Brennan has stated:

To create embryos with no intention of permitting implantation is to cross a moral Rubicon.

Instead of nurturing our offspring, we as a human species will have agreed to plunder them. 'Do no harm' is a principle which has enlightened 2,500 years of Western medical and scientific practice. It is the bedrock upon which ethical medical science is founded. It has been restated in various declarations over the past 60 years, beginning with the 1948 Declaration of Geneva. This enlightened tradition has always placed great emphasis on the intrinsic worth and equal value of every human life regardless of its stage or condition. We should not depart from it. It is dangerous to treat any human life as expendable. The proponents of embryonic stem cell experimentation often like to paint their opponents as having a religious view, but concern about destructive research is shared by many people, of religious belief and none. Guy Rundle, editor of the leftist magazine *Arena*, has written:

As human life becomes increasingly abstracted, commodified, manipulable and dehumanised, a wider sense of foreboding spreads.

Another non-religious critic, Kate Cregan, observes:

I am concerned with what these technologies do to us socially, how they contribute to normalising the idea that we are reducible to the sum of our interchangeable, abstracted, constitutive parts.

Having commodified the child, we are now told that we should objectify life itself, turning us all into potential spare parts. As Kate Cregan writes:

You get caught pitting one set of competing liberal rights against another, and like a good utilitarian weighing and apportioning worth to desires, totting up ethereal happiness factors in an abstract equation that flattens out any social or cultural content in what is involved.

Worse still, this science will only work if tens of thousands of eggs can be procured. As Katrina George notes:

... the eggs have to come from somewhere and experience overseas shows that the only way is to pay women.

In Britain this has already occurred—so the embryo is a commodity and women become commercial egg suppliers. And all this is being done in the name of potential. In the Lockhart report, we read:

The Committee ... agreed with the many respondents who thought that the moral significance of cloned embryos that are not implanted is linked more closely to their potential for research developments ... than to their potential as a human life.

Where are the benefits that could even justify the greatest good for the greatest number? We are being sold a scientific mirage. As Professor James Sherley pointed out, the science is flawed for the fundamental reason that ‘embryonic cells cannot be used to replace adult tissues’.

There are more than 100,000 embryos left over from IVF procedures in freezers in Australia, yet there have been only a handful of applications to study them under existing legislation. And none of these studies has reported substantive, refereed results. This bill not only will allow embryos to be created for deliberate destruction but will allow eggs to be harvested from aborted female foetuses for similar use. I find this particular proposal reprehensible. How many Australians—indeed, how many members of this House—know that this bill allows for licences to be issued authorising the creation of a human embryo using ‘precursor cells from an embryo or foetus’?

The technical term ‘precursor cell’ is defined in the existing legislation as a cell that has the potential to develop into a human egg or human sperm. The proposal is that a human embryo could be made by using eggs taken from a female foetus. Research on this technique was described by Israeli scientists in 2003. They took a slice of ovarian tissue from each of seven aborted baby girls and conducted successful experiments in maturing eggs from this tissue. The baby girls had been aborted between 22 weeks and 33 weeks gestation. It is generally anticipated that eggs could only be derived from baby girls aborted late term in pregnancy.

The Lockhart review produced no scientific rationale for this proposition in its report, nor could the former members of the committee supply any rationale for it in answer to questions from the Senate inquiry. The Senate rightly removed from this bill the abhorrent provision that human-animal hybrids could be created using animal eggs and human DNA. I ask honourable members who may be listening to this debate: how many of you will return to your electorates at the end of this week and tell your constituents that you voted for a provision that would allow a human embryo to be created from the eggs of a second or third trimester aborted baby girl? Tell me that you believe that such a procedure has the support of Australians. It does not, and it should be rejected.

Let me return to my other objections to this bill. Firstly, the title of bill implies that its purpose is to prohibit human cloning. It does no such thing. What the bill does is to allow an embryo to be formed by the process of SCNT. If that embryo is then destroyed to obtain embryonic stem cells, it is lawful. If, alternatively, that embryo was to be implanted into a woman, it is unlawful. The bill does not prohibit human cloning at all. Its central purpose is to allow human cloning. It then prohibits a particular use of the cloned embryo, namely for reproduction, but allows its destruction.

Indeed, the Lockhart committee argued that, as there is no intention to create a person, embryonic stem cell cloning is ethical. No attempt was made by the committee to explain the moral or logical difference between creating a person’s cells and creating a person. Indeed, the Lockhart committee bases its conclusions on the ‘relational significance’ of the embryo. This is an absurd proposition in the first place, which is then undermined by attaching a different ethical significance to the embryo, depending upon its age. We are told that the ethical significance of the embryo changes on day 14. On day 13 it can be destroyed for research, but on day 15 it cannot.

This argument is totally unconvincing. It reflects the shifting goalposts that have been a feature of this debate over the past six years. As other honourable members have pointed out in their contributions to this debate, who is to say that in another year or two or three the argument will not be advanced that we accepted day 14,

so why don't we accept day 28 or day 56 or whatever? Further, the distinction that some draw in this debate between reproductive cloning and therapeutic cloning is mistaken. It was rejected by the inquiry of the House of Representatives Standing Committee on Legal and Constitutional Affairs into human cloning, which I chaired in 2001. What is proposed is the destruction of the embryo, not some procedure undertaken for its benefit.

As the US President's Council on Bioethics stated, we should resist 'the temptation to solve the moral questions by artful redefinition or by denying to some morally crucial element a name that makes clear that there is a moral question to be faced'. The council concluded that an embryo produced by SCNT is an embryo. Whether or not we agree with the destruction of embryos, it is misleading to pretend that this bill prohibits embryo cloning.

Secondly, the bill is premised on the assertion that there have been substantial developments in stem cell technology since 2002 that justify the deliberate creation of human embryos for destructive research. The committee's reasoning is parlous in the extreme. It states that 'further research involving both adult and embryonic stem cells is required to improve knowledge and to develop effective disease treatments', that such research is undertaken elsewhere and that regulations can prevent any 'slippery slope'. Further, as there was no intention to implant the embryo, its moral status could be ignored.

Prominent among the overseas research referred to by the committee was that undertaken in Korea by Professor Hwang, who had been feted in scientific circles for having purportedly shown that this type of research could be used to tailor cures for specific diseases. Hwang was subsequently outed as a fraud for fabricating his research. The Hwang saga and other cases of extravagant claims call for a healthy dose of scepticism when making public policy in this field. This is especially so in cases of claims that embryonic stem cells will lead to cures for Parkinson's disease, diabetes and other life-threatening illnesses.

Leaving Hwang aside, there is little evidence of real scientific progress. Consider the conclusions of Professor Jack Martin in his evidence to the committee:

The potential benefits of treatment of diseases with human ES cells have been greatly exaggerated, with many of the suggested cures only long term possibilities and some not even remotely possible. There has been no proof of concept provided from animal experiments that animal ES cells can be used effectively and with long term safety.

The use of somatic cell nuclear transfer (SCNT) to generate ES cells to tailor cells for individual patients is a process that is beset with many practical difficulties, including the requirement for a large supply of donor eggs, and the inevitable very great expense of the project per patient.

In addition to requiring animal studies to establish efficacy, safety issues are paramount, with ES cell transplantation still being associated with a substantial rate of formation of serious tumours. The causes of that complication must be determined and tumour formation prevented before any human therapeutic studies could be contemplated.

Currently there is no evidence to justify even the most limited trial of ES cells in treatment of human subjects.

With no adequate evidence to show that human ES cells are essential to provide treatments for disease, the argument has been made that research should be permitted on human ES cells obtained by SCNT, to study mechanisms of specific diseases. The validity of this claim must also be established through animal experimentation, to show that the potential benefits are sufficient to overcome some of the ethical objections.

The United States National Institute of Health Stem Cell Task Force provided evidence similar to that of Professor Martin to the US House of Representatives government reform committee, and yet the Lockhart committee blithely accepted the claims being made for this research. It stated, for example:

Many researchers, and people with diseases that could potentially be treated with ES cell therapies, would like the prohibition on cloning to generate ES cells to be lifted.

But, as Professor Martin and others have indicated, there are numerous practical problems with so-called therapeutic use of embryonic stem cells. No embryonic stem cell technology is even remotely close to a clinical trial. The committee conceded that embryonic stem cell research:

... is mainly confined to preclinical (animal) studies because the cells are not yet characterised well enough for use in clinical trials and there are significant risks (such as tumour formation).

Hence the situation today remains exactly the same as it was four years ago when this parliament unanimously rejected such a proposal. Instead of the scepticism that should have been brought to this review, the committee takes the claims of potential for granted. Indeed, the committee:

... considered that the higher the potential benefits of an activity, the greater the need for ethical objections to be of a high level and widely accepted in order to prevent that activity.

In other words, the greater the claim of potential benefit, despite any real evidence, the easier it is to reject ethical considerations and objections. This is not a logical or rational argument; it is pure advocacy. The legislation review process was, in my view, fundamentally flawed. The committee did not test any competing ethical claims. Detailed work undertaken by bodies such as the President's Council on Bioethics, for example, was all but ignored by the Lockhart committee. Thirdly, the committee's discussion of community attitudes was flawed. Although it referred to a survey by Biotechnology Australia about public acceptance of the technology, it ignored other surveys, such as the 2004 Swinburne study. That study showed considerable public disquiet about the use of cloned embryos but acceptance of the use of the ethically less contentious adult stem cells.

Worse still, the committee invented a novel approach to community standards in order to justify its conclusions. Instead of adopting the time-honoured, legally established methods of ascertaining general standards approved by most reasonable members of the community, the committee invented a series of communities with different standards and concerns. As Professor Frank Brennan has pointed out, Australian courts have rejected such an approach time and time again. The novel approach, however, allowed the committee to dismiss the overwhelming majority of submissions from individuals who opposed destructive cloning research. Indeed, the committee's response to public disquiet is an ongoing education campaign—*Brave New World!*

I do not believe the committee nor the proponents of this legislation have produced any evidence of either scientific developments or changed community attitudes that would justify passing the bill. An embryo is not a commodity. This bill ought to be rejected.