1996

# Human Cloning and the Family: Reflections on Cloning Existing Children [comments]

Stephen A. Newman

NEW YORK LAW SCHOOL
JOURNAL OF HUMAN RIGHTS



**Volume XIII** **Spring 1997** **Part Three**

# HUMAN CLONING AND THE FAMILY: REFLECTIONS ON CLONING EXISTING CHILDREN

*Stephen A. Newman*[*]

## *I. Introduction*

The prospect of human cloning—a once-fanciful idea that now must be treated seriously as a future scientific possibility—raises many issues for social policy makers, not the least of which is whether the

[*] Professor of Law, New York Law School; B.A. 1967, University of Pennsylvania; J.D. 1970, Columbia University (Law Review). NYLS since 1974. Director, Consumer Law Training Center, 1974-78. New York City Department of Consumer Affairs, Staff Attorney and Deputy Consumer Advocate, 1970-73; Acting Consumer Advocate and Chief, Law Enforcement Division, 1973-74. Professor Newman teaches numerous courses specializing in family law issues. His publications include: *At Work in the Marketplace of Ideas: Academic Freedom, the First Amendment, and* Jeffries v. Harleston, 22 J.C. & U.L. 281 (1995); *Assessing the Quality of Expert Testimony in Cases Involving Children*, J. PSYCH. & L. (1994); CAVEAT VENDITOR: A MANUAL FOR CONSUMER REPRESENTATION IN NEW YORK (2d Ed. 1994); *Euthanasia: Orchestrating the Last Syllable of Time*, 53 U. PITT. L. REV. 153 (1991); *Baby Doe, Congress and the States: Challenging the Federal Treatment Standard for Impaired Infants*, 15 AM. J.L. & MED. 1 (1989).

process ought to be entirely banned. The concern I wish to explore here is whether clonal reproduction might put too great a strain on the family, an institution already laboring under the substantial pressures of modern life.

Recent scientific experiments allow us to imagine how cloning might be employed as a way to create children. In 1993, scientists at George Washington University split off individual cells from early human embryos; with the interventions of the scientists, the separate cells began growing as separate, genetically identical embryos. The researchers used abnormal embryos to experiment with, and did not intend to implant any of the embryos to create human clones.

Assuming further development of this possibility, we can envision identical embryos implanted simultaneously into a waiting womb, resulting in multiple identical births. The process would require one male and one female progenitor, and would resemble a naturally occurring phenomenon, the birth of identical twins. We can also imagine identical embryos being frozen, and used at different times to produce genetically identical children of varying ages.

A 1997 report of the experimental cloning of an adult sheep by researchers in Scotland introduces a new and startling possibility for human reproduction. The team of researchers extracted DNA from a body cell of an adult sheep and removed the nucleus from an unfertilized egg of another ewe. They inserted the extracted DNA into the egg cell, which caused the egg to develop into an embryo. Following uterine implantation (using a surrogate mother sheep), a lamb—the clone of the DNA-providing animal—was born.

We may now imagine a human clone created from DNA taken from the cells of an existing adult or an existing child. We can even posit asexual reproduction by a woman without a man's involvement: she merely provides her own DNA, her own unfertilized egg, and her own womb. With the assistance of her own lab technician, she can provide all the material elements of procreation by herself.

However cloning may be accomplished, serious issues about its social and moral consequences command our attention. Some

objections to cloning arise from the possibility of achieving childbirth with DNA donated—or sold—to strangers. I will confine my discussion here, however, to situations in which the clone of an existing child would be created at the behest of at least one parent who intends to raise the child as her own. I will assume that parental motivations to use cloning are not unconscionable or disreputable, but deserving of consideration. For example, some parents may wish to avoid a significant risk of passing along specific, serious genetically-related diseases. Others reacting to the tragedy of a dying child may see in cloning a way to replace that child. As will be seen, whatever the parental motivation, cloning still poses substantial threats to the well-being of families and the interests of children.

## *II. Cloning of Existing Children to Produce Genetically Identical Children Over Time*

Children, though generally unable to articulate, advocate, and exercise judgment about their interests, nevertheless have critical interests that deserve respect and recognition. In family life, children's interests generally do not extend to decision making about the introduction of new children into the family. The addition of new children who are clones of an existing child, however, is different in kind from the ordinary decision about family size that parents exclusively control.

Unlike the natural birth of siblings, the birth of a later-born clone is a deliberately taken decision to create an individual with the entire genome of a living human being. This is much more troubling than normal sibling birth. The genome is not the sole determinant of human identity, but it is an essential and critical ingredient. It is a vast part of ourselves, defining numerous personal characteristics, and we need not feel compelled to allow something so closely touching upon our sense of our own personhood to be shared by anyone else. We already have public opinion surveys which show that most adults, if offered the

choice, would refuse the chance to be cloned.[1] Reasonable adults may regard the prospect of cloning themselves as psychologically unsettling, morally disturbing, and even bizarre. If this is so, we cannot justify imposing cloning upon children, who cannot give mature consent to the decision but who would have to live with its consequences for the rest of their lives.

It may be claimed that the existence of natural-born identical twins argues against this position. But the cloning of oneself, once one is in the world, seems vastly different from the chance simultaneous birth of genetic twins. Development of personal identity, a sense of one's individuality, and a sense of one's place in the world are already progressing or well along in the case of the existing person. All of these can be profoundly shaken by the notion of a clone, a potential shadow-self, being brought to life.

These observations are particularly telling in the case of a child, for then the clone is introduced into the family, the formative context for building human identity and the site of the most crucial relationships that pervasively influence who the child is and what he will become. It may well seem to the existing child that issues of identity, individuality, and one's place in the family are suddenly and crazily re-shuffled with the appearance of a clone, with all familial commitments and understandings previously reached now indefinitely suspended.

Consider a five year old child faced with a newborn clone of herself. The newborn is likely to get more attention, because infants naturally need so much care and are expert at winning parental affection and attention. This may generate jealousy and resentment on the part of the older child. All this, of course, happens with ordinary siblings. But can we say matters are not complicated and feelings confused perhaps exponentially by the inevitable parental remarks over clonal similarities to the "original" child, and that child's thought that "this is a duplicate of myself that my parents prefer and that I resent"? The child may well

---

[1] When asked "If you had the chance would you clone yourself?," 91% of the respondents in a February poll said they would not. *Special Report*, TIME, Mar. 10, 1997.

think, or unconsciously sense, that she's being replaced by the younger version, who is not merely an independent object of parental affection (i.e., the ordinary sibling), but a better, more worthy, more lovable incarnation of herself. What would it be like to have a person *resembling your past self* being raised along with you, and—in your childish perception, if not in reality—preferred over you?

Tampering with such fundamental issues for the child as her developing sense of self worth, her value as an individual, and her place in the family seems wrong, putting at risk the child's vital interest in emotional stability and security within the family. Offering the child a rational explanation of the clone will not suffice here. Children cannot control their own development with reason. Their reasoning ability itself needs to develop; children's thinking is a blend of what they know of reality and their imaginings, fantasies, fears, and imperfect understandings of what is happening around them and within themselves. The complexity of family relationships defies conscious analysis by the participants in any event. Adults as well as children do not clearly understand their own emotions, motivations and behaviors in the family setting. It is unrealistic to expect the child to feel reassured, comforted or consoled by a simplistic "rational explanation" of the clone as a separate individual who poses no threat to her now or in the future. Even a child is likely to sense that the truth is infinitely more complicated than this.

The experience of the young clone growing up with a physically identical sibling must also be taken into account. This child might have the feeling that she is not a truly separate individual, but one whose path has been pre-marked by the "original" version of herself. For her, footsteps have been laid down; not following them may incur the disapproval of parents, sibling, teachers, relatives, or others aware of her clone status. These significant other people in the child's life may also regard the clone as not a "normal" child but something almost freakish, someone literally created in the image of another human being. Of course, we accept naturally occurring identical twins as normal. But the natural is more readily accepted as normal than the humanly planned

aberration from the norm. Unless clones are produced in substantial numbers, they will inevitably be regarded as different, and because different, abnormal and odd.

This is not simply a matter of prejudice, though prejudice there will surely be. When the procreative process is diverted from its normal course, in so radical a way as cloning genetic copies of existing humans, we make a clone different from the outset of life. We are then unavoidably tampering with its future development, in ways we cannot predict. Can we expect, for example, a clone's development of a sense of personal identity to proceed along normal lines? Intuitively, we cannot help but see a threat to individuality, to a sense of one's own uniqueness, to a sense of self-worth, to an independent, well-integrated personality. We would be tampering with the basic building blocks of both physical and mental life, in a social experiment that burdens and puts at risk the existing child and all of her replicas.

### *III. Cloning an Existing Child by Taking DNA From the Child*

Cloning might make it possible for parents to create a family with genetically identical children spaced years apart through removal of genetic material from the body cells of an existing child. The child's DNA, fused into an unfertilized egg cell of its mother, could then direct the growth of the child's clone, leading to the birth of a genetically identical, younger twin. Use of this technique would raise all of the concerns discussed above, and create another serious objection stemming from the clonal technique itself.

Cloning of an existing child by transferring DNA from a body cell of the child is ethically unacceptable because it involves a child in the process of human procreation. This is so even if it is a simple, painless procedure to take a cell from the child, and if reproduction then proceeds in an asexual way. The use of that cell to produce a baby is an act that makes the child a participant in the reproductive process, a

process that should be the exclusive domain of adults. A child cannot take responsibility for the act of reproduction, and should not be burdened with the knowledge that he has been used for such a purpose. Involving the child, however much or little, in a procreative act with its own mother is to cross a barrier between mother and child that must remain absolute and unbreachable.

### *IV. Cloning to Replace a Dying Child*

It is sometimes suggested that a clone could be created by parents to replace a dying child. This is a variant of the notion that American know-how can solve any ills we have, but it is a sorely misguided and simplistic "solution" to a tragic family event. The proffered solution misses the basic point that people are irreplaceable. Parents motivated by the desire to re-create a lost child would soon be confronted with the fact that the new child is not the same as the child they lost. Differences between the two would be produced by a complex mix of non-genetic factors, including differences in brain development after birth, in parenting (the same parents might be profoundly changed after experiencing the death of a child), in relationships with extended family and friends, and in school, community, and cultural environments. Just as identical twins are separate individuals, with separate personalities and separate experiences of life, the "replacement" child would be a separate being from the dead or dying child.

If re-creation of the dying child is a fantasy, we are then led to ask: what happens when the parents' dream of identity fails? Will parents struggle against the child's development of a unique self-identity, in an effort to make the replacement as much like the original as possible? Will the child be burdened with the knowledge that he was created in the image of a dead child, whom he closely resembles but cannot really replace? The sight of the replica-child will be a powerful reminder of the dead child; the parents may feel haunted by the loss of the first child as they live with its look-alike replacement. Indeed, as a

stimulus to thoughts of the tragic loss and to the many emotions—sorrow, hopelessness, bitterness, anger—associated with the death, the "replacement" child risks becoming more associated in a parent's mind with death, than with new life.

Bereaved parents deserve our greatest sympathy. Some, in their grief, might wish to turn to cloning techniques to enact their child replacement dream. But cloning in this situation, instead of providing relief, threatens to further disorient the parents and to distort the fundamental relationship between parent and child. Policy makers, however sympathetic to such parents' plight, need not approve a radical human replicative technology in order to allow suffering parents to create a fantasy "replacement" child.

### *V. Conclusion*

Existing children should be protected from the lifelong, unpredictable and potentially troubling consequences of cloning. Most adults would find cloning themselves morally and psychologically disturbing; such a choice cannot be made for and imposed upon children. Introducing a child's clone into the family, the place where the existing child must develop his personal identity, sense of self-worth, and human individuality, threatens the child's development in ways the family cannot be expected to understand or to effectively manage. Cloning of a dying child seems a perhaps understandable but foredoomed attempt to re-create the lost child. It would unfairly burden the "replacement" child and distort its vital relationship with the parents.

Those who see no objection to the cloning of existing children need to give this potential method of reproduction a hard, and careful, second look.