An “identity crisis” in the international law of human rights? The challenge of reproductive cloning

SONIA HARRIS-SHORT*
Lecturer in Law, University of Durham

Introduction

The potential to utilize Somatic Cell Nuclear Transfer (“SCNT”) – more popularly known as human cloning – in the treatment of patients suffering from serious debilitating diseases, such as Parkinsons,1 has led some States, including the UK, to permit further research into the development and potential therapeutic application of this controversial technique.2 The very high risks associated with the use of SCNT currently render human cloning for reproductive purposes unthinkable.3 However, the more skilled and efficient scientists become in the use of cloning technology for therapeutic purposes, the greater the likelihood that reproductive cloning will become a technical possibility. Indeed in April 2002, the controversial Italian scientist, Dr Severino Antinori, was reported as saying that one of his patients was pregnant with a cloned embryo.4 This was followed in December 2002 with claims by the company Clonaid that the first cloned child had been born to US parents.5 In contrast to therapeutic cloning, the possibility of creating cloned human beings through the use of SCNT, has generally been greeted by fierce opposition, no doubt prompted by disturbing images from the world of science fiction. However, although some have more obvious merit than others, a number of potentially “beneficial” uses of reproductive cloning have been identified (Robertson, 1998, see also Beyleveld and Brownsword, 1998; Bell, 1999). For infertile couples unable to take advantage of more conventional fertility treatment, cloning one parent may constitute the only means of parenting a genetically related child. It may also provide the only means of ensuring that a hereditary genetic disease carried by one parent is not transmitted down to the next generation. For the parents of an existing child, a number of deserving scenarios can be envisaged where they may seek to employ the use of SCNT to produce a cloned sibling. Examples typically cited include the use of cloning to produce an identical replica of a dead or dying child and the cloning...
of a sibling to produce a source of genetically identical organs or tissue for transplantation (Robertson, 1998). One may be considerably less sympathetic to the aspirations of those who see the potential to clone existing, or even deceased, individuals, as a means of choosing their “perfect” baby or simply as a means of “cheating death”. However, should the science develop to a stage where the use of reproductive cloning becomes a safe technical possibility, one can appreciate the force of a desperate plea by the parents of a dying child to allow them to utilize the technology to produce a genetically compatible sibling if the clone will have the potential to save the existing child.

However, despite these potential “benefits”, the response at the national and international level to the “threat” of reproductive cloning has been strong and unequivocal. At the national level, the UK Parliament recently approved legislation making it a criminal offence to place in a woman a human embryo created otherwise than by fertilization (Human Reproductive Cloning Act 2001, s.1). At the international level, the UK House of Lords Select Committee on Stem Cell Research reports that there is “known to be widespread agreement” on the desirability of introducing an international ban or moratorium (2002, para. 7.17). The growing international consensus on the issue is reflected in UNESCO’s Universal Declaration on the Human Genome and Human Rights,7 the Council of Europe’s Additional Protocol to the Convention on Human Rights and Biomedicine, on the prohibition of Cloning Human Beings8 and the Charter of Fundamental Rights of the European Union,9 all of which enshrine an unequivocal ban on the cloning of human embryos for reproductive purposes.10 As these various international measures all make clear, securing a ban on reproductive cloning in international law has become inextricably linked to the protection of fundamental human rights, in particular, the need to protect the dignity, integrity and identity of all human beings. It is therefore somewhat surprising that among some human rights scholars there exists strong scepticism, even opposition, to the contention that reproductive cloning violates any recognized norm of international human rights law. In fact, in stark opposition to the above contention, it is suggested that to introduce a binding international prohibition on reproductive cloning would contravene the fundamental right of individuals to reproductive autonomy and choice. In light of this argument, the purpose of this paper is to examine whether or not the scepticism of commentators is well founded. In particular, it will be considered whether, despite the ostensible right of an individual to reproductive autonomy and choice, moves by the United Nations and the Council of Europe to secure a binding international agreement prohibiting reproductive cloning under international law, are successfully grounded in, and consistent with, the existing body of international human rights norms.